ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1884,

WITH INDEX,

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Government of India Central Printing Office.—No. 458 L. D.—9-2-86.—300.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 4th January, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble Durgá Charan Láhá.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Darbhangá.
The Hon'ble J. W. Quinton.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.I.E.

UNIVERSITIES HONORARY DEGREES BILL.

The Hon'ble MR. GIBBS moved that the Report of the Select Committee on the Bill to authorize the Universities of Calcutta, Madras and Bombay to grant certain honorary degrees be taken into consideration. He said, in making the Motion, that the Select Committee had considered the letters which were received from the various Governments forwarding the opinions of the Universities concerned, and, in accordance with those recommendations, they had made some slight alterations in the Bill so as to simplify the procedure. The Syndicates of those various Universities were not composed of the same number

of Fellows, and consequently the concurrence of four Members of the Syndicate, in reference to the conference of an honorary degree, would not work. The Bill had now been amended so as to require that two-thirds of the other Members of the Syndicate should concur with the Vice-Chancellor. The recommendation would then go to the Senate, which would finally submit it to the Chancellor for approval. The only other point which required notice in the new Bill was, that they had retained in the Bill the words of the original Calcutta Bill which was passed to enable that University to confer the degree of Doctor in Law on the Prince of Wales. They had received one criticism on this phrase to the effect that "eminent position" must mean "eminent position in society," whereas they considered that the term would include a person eminent in position as regards literature, science or art; the Committee considered no better term could be found, and the original phraseology was therefore maintained.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS also moved that the Bill as amended be passed.

The Motion was put and agreed to.

AGRICULTURISTS' LOANS BILL.

The Hon'ble SIR STEUART BAYLEY moved for leave to introduce a Bill to amend the law relating to loans of money by the Government to agriculturists. He said that the Act which he was asking the Council to amend was known as the Northern India Takkáví Act. The Act was a very small one; and its whole essence consisted of one section, which said that—

"The Local Government may, from time to time, with the previous sanction of the Governor General in Council, make rules as to loans to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects."

The loans were to be recovered as arrears of land-revenue. The object of the amending Bill was in the first place to correct a small omission which was made in the original Act. The omission was this, that, although the loans themselves were recoverable as arrears of revenue, no arrangement was made for the recovery of interest on those loans. It was proposed to provide for this. The second point was that the Act, which extends at present only to Northern India, might, at the option of other Local Governments, be extended to the provinces under their jurisdiction. The third point was to provide that loans given on the joint security of village-committees, or to other agricultural

associations of the same kind, might be collected on the joint responsibility in the same way as in the Agricultural Improvement Loans Act. These were all the proposals of the amended Bill, and he now asked leave to introduce it.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, the Hon'ble Sir A. Colvin, the Hon'ble Messrs. Evans, Quinton, Gibbon, Miller and Amír Alí and the Mover, with instructions to report in a week. He said :—

"This Bill, in the form in which it is technically before the Council, and apart from the modifications to which I shall refer later on, consists substantially of two enactments, one direct, the other indirect or permissive. The first of these enactments (I refer to them in the order of their importance, not in the order in which they stand in the Bill) declares that every person who occupies the position of District Magistrate or Sessions Judge shall, as such, be qualified to exercise jurisdiction over European British subjects. The second or permissive enactment gives a discretionary power to Local Governments to confer this jurisdiction on such other persons as may be considered fit to exercise it, provided that they have already certain specified powers, and have attained to some one of certain specified ranks in the service. The Bill was framed on the assumption, which I believe to be correct, that the total number of persons whom it would be necessary to invest with these powers would not be large, and that the Local Governments might fairly be trusted to exercise a wise and sound discretion in their selection, but that it might be desirable to confine the range of selection within certain limits. The particular limits suggested were, of course, arbitrary, and were obviously open to further consideration. In so far as they operated to take away the power of appointing unofficial Europeans to be Justices of the Peace, I think that they were defective and required amendment. The Bill did not enlarge in any respect the very limited jurisdiction now exercisable over European British subjects by Magistrates and Courts outside the Presidency-towns, a jurisdiction which may be roughly compared to that exercised in England by Magistrates in petty sessions; and its practical effect has been not unfairly described by saying that it proposed to 'invest a very small number out of the ablest, the most experienced and the most distinguished of our Native Magistrates and Judges with an infinitesimal jurisdiction over European British subjects.'

"Such were the provisions of the Bill as introduced; and, as to its principle, I do not know that I can describe it better than by repeating what I said on a previous occasion, namely, that it aims at the removal of a disqualification based on race, and the substitution of a qualification based on personal fitness. It is not, and was never described by any member of the Government as being, the abolition of race-distinctions for judicial purposes. Such a description would have been obviously inconsistent with the retention of those privileges which Europeans now enjoy, and which we never proposed to take away. Nor, again, is it accurate to say that we have ever announced the policy that race-distinctions in the bestowal of administrative offices shall cease. The Bill would not prevent, and was never intended to prevent, the element of race from being taken into consideration, among other elements, in weighing the qualifications of a Magistrate or Judge. It merely declares that the simple fact of race, or I should be more accurate in saying that the simple fact of not belonging to an artificially defined and circumscribed category of human beings, that this fact, standing alone and apart from all other considerations, shall not constitute an absolute disqualification for the performance of certain important magisterial judicial functions. The argument that race-distinctions rest on certain physical and moral characteristics, and that we can neither create nor remove them by legislation, is really beside the mark. Nobody ever contended that we could. What we do contend is that, in selecting an official to hold a post, to perform duties or to exercise powers, the first thing to look to is his personal fitness; that the fact of belonging or not belonging to a particular race is not conclusive evidence of unfitness; that the line which parts fitness from unfitness does not coincide with the boundary which parts the European British subject from members of a less favoured class; and that, for the purpose of considering whether a man is or is not qualified to be a Justice of the Peace, we ought to be absolved from the necessity of ascertaining whether his parents were or were not lawfully married. In short, the principle of the Bill is the removal not of race-distinctions, but of race-disqualifications, which is a very different matter.'

"This, then, was the Bill which was, in pursuance of the Resolution of the 9th of March last, published and circulated in the usual way for the opinions of Local Governments and others. When those opinions were received, it became our duty to consider them, and to see how far it would be possible to give effect to them consistently with our paramount duty of maintaining what His Excellency the Viceroy has referred to as 'the declared policy of the Crown and of Parliament'—the paramount duty of observing what I may describe as the constitutional enactments and constitutional pledges by which we are bound.

"Of those constitutional enactments and pledges, the most important for our present purpose are to be found in the Charter Act of 1833 and in the Queen's Proclamation of 1858. The Charter Act of 1833 enacts that—

'No Native of the said territories' (that is to say, the territories then under the Government of the East India Company) 'nor any natural-born subject of Her Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office or employment under the said Company.'

"And the Queen's Proclamation of the 1st November, 1858, says—

'It is our further will that, so far as may be, our subjects of whatever race and creed be freely and impartially admitted to offices in our service, the duties of which they might be qualified by their education, ability and integrity duly to discharge.'

"Now, I read the second of these two instruments as confirming and supplementing the first. The first removes a legal obstacle by invalidating disqualifications based exclusively on religion, place of birth, descent or colour; the second imposes a positive obligation by directing that, so far as may be, the persons whose disabilities had thus been removed not only may, but shall, be admitted freely and impartially to offices in the public service, subject only to the test of fitness.

"Of course, I do not overlook the force of the qualifying words 'so far as may be.' They justify the Government in declining to apply the general principle laid down by the Proclamation in such a manner, to such an extent, or under such circumstances as might endanger the supremacy of the British Government, impair the efficiency of the administration, or imperil the lives, liberties or property of any class of British subjects. Thus, they are merely a qualification of a general rule: the burden of proof is on those who allege that special circumstances exist which make the general principle inapplicable.

"Now, it is the overlooking of this that appears to me to constitute a weak point in many of the arguments advanced against the Bill. For instance, His Honour the Lieutenant-Governor of Bengal has urged the withdrawal of the Bill 'in the conviction' as he says, 'that it is not necessary for the judicial work of this country.' And the English Judges of the Calcutta High Court, in their very able minute, have argued that, unless we can show that our proposals will tend to make the administration of justice more impartial and effectual than it is at present, the ground is cut from underneath our feet. I believe that our proposals would have that tendency, but it is unnecessary for me to press that point. All that I need say is that the line of argument which I

have indicated appears to me to be based on a misconception of the point of view from which we approached, and from which I contend that we ought to approach, the subject. We start from the assumption, not that legal disabilities ought to be retained until the necessity for removing them has been proved, but that we ought to remove them unless and except so far as their retention is shown to be necessary. And the question which we had to consider in framing the Bill was whether the mode and extent of removal which we proposed would or would not interfere with the effectual and impartial administration of justice.

"Now, I can quite understand the possibility of arguing that the Charter Act or the Queen's Proclamation ought not to be construed or applied in the way in which I have contended that they ought to be construed and applied. What I find much greater difficulty in understanding is how it can be seriously argued that in dealing with the subject we are entitled to disregard these instruments altogether. And yet we have been told on high authority that they have no practical bearing on the question before us. We have been told that the Proclamation has no legal force whatever; that as a ceremonial, it may have been proper; but that, in any other point of view, it is a mere expression of sentiment and opinion, worth as much as the sentiments and opinions expressed would have been without it, and no more. We have also been told that the Charter Act has no force beyond the legal effect of its words; that it has a legal value, but no other value; and that it would be absurd to suppose that Parliament can impose on any one, and in particular that it can impose on any body having legislative power, a moral obligation to take some principle as a guide for legislation, and to embody it in definite enactments from time to time, irrespectively of all other considerations." These statements appear to me to involve a grave misapprehension both as to the constitutional relations between the Government of the United Kingdom and the Government of this great dependency, and as to the principles of construction which ought to be applied to documents of the class to which the Charter Act and the Queen's Proclamation belong. That we have been placed under any obligation, moral or otherwise, to pass any particular enactment at any particular time, irrespectively of all considerations, is what no one has suggested. But I should have thought it was clear beyond all manner of doubt that it is within the competency both of Parliament and of the Crown to indicate in more or less general terms the line of policy which the Government of India is to adopt with respect to any particular subject, and to impose on this Government the obligation of observing that policy. Such an indication of policy is, I take it, to be found both in the Charter Act and in the Queen's Proclamation. Their general effect, as I construe them, is to lay down a clear and distinct principle for the guidance of

this Government, and to leave a wide discretion as to the time, mode and extent of applying that principle.

"And when construing such documents I do not think that we should be justified in explaining or refining them away as a subtle judge or advocate would explain or refine away an inconvenient enactment. On the contrary, our duty is to place on them a broad and liberal interpretation, and to use our best endeavours to ascertain and observe their spirit as well as their letter. Of the Queen's Proclamation I will say nothing, except that, so far from treating it as a mere expression of sentiment and opinion, I regard it as one of the most solemn and formal pledges which was ever given by a ruler to her subjects. About the Charter Act, since its meaning and object have been seriously questioned, it is, I fear, necessary that I should say something more, in order to explain the circumstances under which it was passed, the nature of the policy to which it was intended to give effect, and the mode in which effect has from time to time been given to that policy.

"At the time when the Charter Act of 1833 was passed, the independent British settler, the forerunner of the modern planter, existed only by sufferance in this country. He was regarded as an interloper, and was not allowed to reside in India except under a special license. It was well known that one of the main objects of Lord William Bentinck's policy was to alter this state of things. He was anxious to facilitate the admission of settlers into the interior, to give them the right to settle there, but to couple with that right as a necessary and indispensable condition the liability to be governed by the same laws and to be under the jurisdiction of the same Courts as the Natives of the country. It was in accordance with, and in furtherance of, this policy that the Charter Act of 1833 was passed. As we know, it considerably enlarged the powers of the Governor General in Council for making laws and regulations which were to be binding on all the Courts of the country, but restrained him from making any law or regulation which should empower Courts other than those chartered by the Crown to sentence British subjects or their children to death, or should abolish the Courts so chartered. And it contained the section, which I have already quoted, removing disabilities based on creed or colour.

"Now, this Act was followed by a further despatch from the Court of Directors to the Governor General in Council, explaining very fully the provisions of the measure and conveying orders as to the mode in which effect was to be given to those provisions. The despatch to which I refer is dated the 10th December, 1834, and is of such great importance as a contemporaneous and authoritative exposition of the policy of the Act, and of the way in which it was

intended by its framers that it should be worked, that I shall make no apology for reading to you some of the passages which bear most directly on the position of British-born subjects under the then new law.

'58. With regard to British-born subjects,' says the despatch, 'when the Act says that you shall not pass laws making them capitally punishable otherwise than by the King's Courts, it does by irresistible implication authorise you to subject them in all other criminal respects, and in all civil respects whatever, to the ordinary tribunals of the country. We know not indeed, that there is any crime for which under this clause they may not be made amenable to the country tribunals, provided that the law, in giving those tribunals jurisdiction over the crime, shall empower them to award to it some other punishment than death.

'59. From these premises there are some practical inferences to which we must call your attention. First, we are decidedly of opinion that all British-born subjects throughout India should forthwith be subjected to the same tribunals with the Natives. It is, of course, implied in this proposition that, in the interior, they shall be subjected to the Mufassal Courts. So long as Europeans penetrating into the interior held their places purely by the tenure of sufferance, and bore in some sense the character of delegates from a Foreign power, there might be some reason for exempting them from the authority of those judicatures to which the great body of the inhabitants were subservient. But now that they are become inhabitants of India, they must share in the judicial habitudes as well as in the civil rights pertaining to that capacity, and we conceive that their participation in both should commence at the same moment.

'60. It is not merely on principle that we arrive at this conclusion. The 85th clause of the Act to which we have before referred, after reciting that the removal of restrictions of the intercourse of Europeans with the country will render it necessary to provide against any mischiefs or dangers that may thence arise, proceeds to direct that you shall make laws for the protection of the Natives from insult and outrage, an obligation which in our view you cannot possibly fulfil unless you render both Natives and Europeans responsible to the same judicial control. There can be no equality of protection where justice is not equally and on equal terms accessible to all.'

"And then in some later paragraphs the despatch goes on to comment on section 87, the section relating to race-disabilities, and what it says about that section is this:—

'103. By clause 87 of the Act it is provided that no person, by reason of his birth, creed or colour, shall be disqualified from holding any office in our service.

'104. It is fitting that this important enactment should be understood, in order that its full spirit and intention may be transfused through our whole system of administration.

'105. You will observe that its object is not to ascertain qualification, but to remove disqualification. It does not break down or derange the scheme of our Government as conducted principally through the instrumentality of our regular servants, civil and military. To do this would be to abolish or impair the rules which the Legislature has established for securing

the fitness of the functionaries in whose hands the main duties of Indian administration are to be reposed—rules to which the present Act makes a material addition in the provisions relating to the College at Haileybury. But the meaning of the enactment we take to be that there shall be no governing caste in British India; that whatever tests of qualification may be adopted, distinctions of race or religion shall not be of the number; that no subject of the King, whether of Indian or British or mixed descent, shall be excluded either from the posts usually conferred on our uncovenanted servants in India, or from the Covenanted Service itself, provided he be otherwise eligible consistently with the rules, and agreeably to the conditions, observed and enacted in the one case and in the other.

'106. In the application of this principle, that which will chiefly fall to your share will be the employment of Natives, whether of the whole or the mixed blood, in official situations. So far as respects the former class, we mean Natives of the whole blood, it is hardly necessary to say that the purposes of the Legislature have in a considerable degree been anticipated. You well know, and indeed have in some important respects carried into effect, our desire that Natives should be admittted to places of trust as freely and extensively as a regard for the due discharge of the functions attached to such places will permit. Even judicial duties of magnitude and importance are now confided to their hands, partly no doubt from considerations of economy, but partly also on the principles of a liberal and comprehensive policy. Still a line of demarcation, to some extent in favour of the Natives, to some extent in exclusion of them, has been maintained. Certain offices are appropriated to them; from certain others they are debarred; not because these latter belong to the Covenanted Service and the former do not belong it; but professedly on the ground that the average amount of Native qualifications can be presumed to arise to a certain limit. It is this line of demarcation which the present enactment obliterates, or rather, for which it substitutes another wholly irrespective of the distinction of races. Fitness is henceforth to be the criterion of eligibility.'

"Here, then, was a sufficiently clear and distinct enunciation of the general policy which the Government of India was expected and intended to follow. On the successive steps which have been taken from time to time to give effect to that policy, I must touch very briefly. The first of those steps was the passing of Lord Macaulay's famous Black Act of 1836. With the circumstances that attended the introduction and passing of that Act all the readers of Macaulay's life are familiar. The controversy which raged around the measure resembled in many of its features the controversy which has raged around the present Bill, and particularly in the predictions which were then so confidently made, and which have been so signally falsified by the event, that, if the measure became law, India would be deserted by British capital. Lord Macaulay's Act has now for nearly 40 years maintained a peaceful and useful existence on our Statute-book, and I am not aware that a single British planter or merchant is a penny the worse for its existence.

"Lord Macaulay's measure applied only to the Civil Courts. But he left on record an opinion that similar legislation ought to be applied to the Crimi-

nal Courts, and in 1843 the Indian Law Commissioners submitted proposals for this purpose. These proposals were considered and commented on by the Judges of the Supreme Court and others, but no steps were taken to give legislative effect to them until 1849. In that year, Mr. Drinkwater Bethune, who was then Legal Member of Council, prepared and published with Lord Dalhousie's assent the drafts of three Bills, one of which proposed to make all persons amenable to the criminal jurisdiction of the Company's Magistrates and Courts outside the Presidency-towns, subject only to the reservation that no such Magistrates or Courts should have power to pass a sentence of death on any of Her Majesty's subjects born in England, or on the children of such subjects. There was no restriction of this jurisdiction to Justices of the Peace. The three Bills met with much opposition, and were eventually withdrawn, for reasons explained by Lord Dalhousie in a minute from which I will quote.

'I am most clearly of opinion,' he says in his minute of 19th April, 1850, 'that the time has come when the exemption in question ought to be abolished, and that British subjects should now be brought within the jurisdiction of Criminal Courts in the Mufassal, as they have long since been brought under the jurisdiction of the Civil Courts there. But, after an anxious examination of the subject, I must declare that I am not prepared to place the British subject under the criminal law which is now administered in those Courts, or to deprive him of his privilege of being judged by English law' (not, mark, English Judges) 'until we can place him under a criminal law equally good, or at all events as good as the circumstances of India will admit of. This is very far from being the case at present. The criminal law administered in the Mufassal is in substance the Muhammadan law, modified from time to time by the Regulations and expounded by the decisions of the Sudder Court.'

"Accordingly, he urges the great importance of pressing on the completion and passing of the Penal Code with such amendments as should be found necessary.

'I cannot,' he says, 'conceive it probable that a Code prepared by men so eminent, judged and approved by so many men of learning and experience, should appear to the Legislative Council so bad in itself, and so incapable of amendment, that they should advise its rejection altogether. If such, however, should be the case, the responsibility of the Governor General and the Legislative Council will be at an end. We have proclaimed to all India by the publication of the draft Acts that it is our conviction that British subjects should be placed within the jurisdiction of the Mufassal Courts, and that we have resolved so to enact. We cannot, without discredit and loss of public confidence and respect, abandon that resolution; we ought not to abandon it. There is no discredit in delaying the passing of the Act for the purpose of providing any possible guarantee by the enactment of a fitting criminal law for the liberty and property of British subjects when placed under the operation of the Act. But we must not, by relinquishing our intentions, give others reason to believe that we have been scared from our right determination by public outcry, still less that we may have allowed ourselves to be driven

from the enforcement of our conscientious conviction of what is right and necessary by difficulties which we encountered in the way. The establishment of the same criminal law generally in the Indian Empire is a wholesome measure, and it must now be accomplished.'

"In 1853 the Charter of 1833 was renewed, and by the Statute passed for that purpose Her Majesty was empowered to appoint in England a new Commission to revise the work of the former Indian Law Commissioners; and to this body the Penal Code and the question of a Criminal Procedure Code, which had been so long pending, were referred. The Commissioners accordingly prepared a draft which eventually, and after undergoing various modifications, became law as the Criminal Procedure Code of 1861, and as the basis of our existing Criminal Procedure Code. By section 5 of this draft it was proposed to enact that—

'No person whatever shall by reason of place of birth or by reason of descent be in any criminal proceedings whatever excepted from the jurisdiction of any of the Criminal Courts.'

"In fact, to apply to the Criminal Courts the enactment which Lord Macaulay had applied to the Civil Courts. The Commissioners said in their notes:—

'We assumed that the special privileges now enjoyed by European British subjects were to be abolished. In the system which we propose, all classes of the community will be equally amenable to the Criminal Courts of the interior.'

"They proposed, however, to give the High Court and Sessions Court exclusive jurisdiction (1) in offences reserved in the schedule of offences appended to the Bill as triable only by such Courts; (2) in theft and receiving when the property was worth over Rs. 500; and (3) in all cases against public servants of certain classes. This last exemption, making a distinction in favour of the official classes, was obviously a weak point in the Commissioners' proposals, and was made the subject of the most effective attacks which were directed against them in the subsequent debates in the Legislative Council.

"These debates, which took place in the years 1857, 1859, and 1861, have already been referred to by my hon'ble friend Mr. Evans and others, and I should not be justified in occupying your time by dwelling further upon them. Suffice it to say, that they were interrupted by the Mutiny; that, although Sir Barnes Peacock in introducing the Bill supported the principle of the section which I have quoted, and said he could not understand on what grounds it could be contended that any one class of persons should be exempt from the jurisdiction of any of the Courts of the country, yet after the Mutiny he saw cause to change his mind. The Code as it finally passed in 1861 left matters relating to the jurisdiction over European British subjects very

much as they were before, except that it restricted the jurisdiction then exercised in certain cases over European British subjects in the interior by Native Magistrates and others not being Justices of the Peace. Such was the conclusion arrived at in 1861, and under the circumstances of the case, when the terrible events of the Mutiny were still fresh in men's memories, when it yet remained to be seen what would be the effect of introducing English substantive law and English rules of procedure into the Criminal Courts of the interior, I do not say that it was an unreasonable, and it certainly was a very intelligible, decision.

"The Penal Code had become law in the previous year as Act XLV of 1860, and, by the enactment of this Code and of the Procedure Code of 1861, the most forcible of the objections which had on previous occasions been urged against extending the criminal jurisdiction of Courts in the interior over European British subjects, the one objection to which Lord Dalhousie attached weight, was removed in the way in which Lord Dalhousie had contended that it ought to be removed.

"The Code of 1861 was amended in various ways by Acts passed in 1861, 1862, 1866, and 1869, and it was clear that it was susceptible of considerable improvement. Accordingly, the Secretary of State in 1869 referred the condition of the Code and its revision to the Law Commissioners at home, and they reported in favour of bringing all classes of persons under its provisions. This, of course, was tantamount to a recommendation that European British subjects should be brought under the jurisdiction of the Criminal Courts of the interior, to which alone the Criminal Procedure Code then applied.

"The report to which I have referred was made in 1870, and in the same year Sir James Stephen revised and re-arranged the Code of 1861, and introduced the measure which subsequently became law as the Code of 1872. The Bill, as first introduced, did not substantially affect the jurisdiction over European British subjects, and it was only at a later stage that the amendments were introduced by which it was proposed to extend the powers of Criminal Courts in the interior over that class of Her Majesty's subjects. And it was in connexion with this proposal that the compromise, to which so much reference has been made, was entered into. There is nothing on record to show the persons with whom, or the manner in which, the compromise was arrived at, but I have no doubt that the accounts of it which have been since given by Sir James Stephen, Mr. Evans and others are substantially accurate. It appears to have been some kind of informal arrangement or understanding to

which at least some members of the Select Committee on the Bill were parties. Two things are clear about it, first, that it was not regarded as binding on the Select Committee as a whole, because one of the members of that Committee voted against the proposals which it embodied, and secondly, that the Executive Government were not a party to it, because the majority of them voted against the proposal. But I need hardly say that, even if the agreement had been as formal as it was informal, it would not have tied the hands of subsequent Governments or have prevented them from passing such enactments as might from time to time be required in the interests of justice, good administration, and sound policy.

"Now, to a compromise, as such, in a matter of this kind, I have no manner of objection. It is reasonable enough in legislation, as in other matters, when you can't get all that you wish, to take what you can get and make the best of it. The main question is whether and how far the particular compromise arrived at is likely to produce inconvenient consequences hereafter, either by abandoning a principle which ought to be maintained or in any other way. And, looked at from this point of view, the compromise of 1872 does appear to me to have been open to somewhat serious objections. I don't say this for the purpose of condemning the compromise, which was, as Sir John Strachey frankly admitted, open to criticisms of every kind, but for the adoption of which at that particular time there may have been strong reasons of a practical nature. But I say it rather for the purpose of showing how difficult it is to make any arrangement on a subject of this kind to which valid objections cannot be taken.

"The chief objections to which the arrangement of 1872 appear to me to have been open are three. First, that, although put forward as a compromise, an attempt was made to defend it on principle, and that the arguments by which it was so defended are unsound and fallacious. Secondly, because the form which the compromise assumed, and the grounds on which it was supported, were not wholly consistent with the principles in accordance with which we are bound to govern India. Thirdly, that it contained the seeds of practical difficulties which were certain to mature at no very distant date.

"One of the main arguments by which the compromise was supported was that in this country, as distinguished from England, personal, as opposed to territorial, laws prevail on all sorts of subjects, and that their maintenance is insisted on with the utmost pertinacity by those who are subject to them. The Muhammadan, it was said, has his personal laws, and the Hindú his. Now, it is perfectly true that we have undertaken to apply the rules of

Muhammadan or Hindú law, as the case may be, to questions regarding succession, inheritance, or marriage or caste, or any religious usage or institution. But have we ever undertaken that a Muhammadan shall be tried by a Muhammadan or a Hindú by a Hindú? And, if not, how can the argument be used to justify the disqualification of a Native for exercising jurisdiction over an Englishman?

"The whole of the argument sounds to me very much like the echo of a past controversy. There had been, not many years before 1872, a time when the Englishman and the Native of India were under different systems of criminal law, owing to the fact that the criminal law administered in the Courts of the Presidency-towns was English law, whilst the criminal law administered in the Courts of the interior was in the main Muhammadan law; and, when this was the case, the Englishman might very reasonably object, and did object with great vigour, to being placed under a criminal law which was not his own. But the Penal Code of 1860 and the Criminal Procedure Code of 1861 had effaced, and it was their main object to efface, these distinctions, and by the passing of these Codes the argument based on difference of laws was deprived of all its significance.

"Very similar considerations apply to an argument which, if I remember rightly, was not used in 1872, but on which a good deal of stress has been placed since—the argument based on the fact that special tribunals for Europeans exist in countries such as Turkey, Egypt, China, and Japan. It is perfectly true that such tribunals do exist, and that we reserve to them jurisdiction over our fellow-subjects. But why? Because, with all the respect that is due to the Governments of those countries, we have not as yet sufficient confidence in their system of administration to place complete reliance on their judicial officers, who are neither appointed, removed, nor controlled by us, and because the criminal law and the criminal procedure which they administer are not in accordance with the principles observed in English Courts of law. But does any one of these considerations apply to those of Her Majesty's Courts which are presided over by Natives of India? The Judges are appointed by us; they are removable by us; their proceedings are subject to our control and supervision in the minutest particulars; the law which they administer is not Foreign law, but English law; and the Codes in which the law is embodied are the work of English lawyers, and are, to quote Lord Dalhousie's language, founded on the principles and instinct with the spirit of the common law of England.

"I have said that the general line of argument by which the 1872 compromise was supported does not appear to me to be wholly consistent with the principles which are laid down in the Act of 1833, and which I hold that we

are bound to maintain. Do not let me be misunderstood on this point. I do not mean to suggest that there is any technical inconsistency between anything contained in the Charter Act and the Queen's Proclamation on the one hand, and any of the provisions of the Criminal Procedure Code on the other hand. If there had been any such inconsistency, of course the latter provisions would not have been allowed to become law. But I do say that the framers of the 1872 Code sailed near the wind. To disable a man on grounds of race from performing an important part of the duties ordinarily attached to an office approaches perilously near to debarring him from holding the office, and certainly places great practical difficulties in the way of his admission to the office.

"Observe that up to 1872 the controversy had been, not whether a European British subject should be triable by a Judge of a particular race, but whether he should be triable by a particular class of Courts—the Courts of the interior—as distinguished from the Courts of the Presidency-towns; that the question of race, when it arose at all, only arose incidentally, and that it was only by indirect means that the jurisdiction of Natives over European British subjects was either limited or excluded. The legislation of 1872 gave jurisdiction to the country Courts, but expressly took it away from the Native Judges of those Courts as Natives It removed the line by which jurisdiction over European British subjects had previously been limited, and drew it between other points. And in so doing it seems to me to have drawn the line precisely at the place where the authors of the Act of 1833 intended that it should not be drawn, and to have emphasized and accentuated the race-disabilities which it was the object of the Charter Act to remove.

"One of the most unfortunate results of the particular form which the compromise of 1872 assumed, and of the particular arguments by which it was defended, was that it attached, or at least materially helped in attaching, an entirely new meaning to that well-worn phrase, the right to trial by peers. We have been repeatedly informed that the Englishman enjoys an undeniable and indefeasible right to be tried by a Judge or Magistrate of his own race, and that this is what is meant by the right to trial by peers which is supposed to be guaranteed by Magna Charta. Now, I do not propose to discuss the precise meaning of the famous passage which declares that no free man is to be imprisoned, and so forth, *nisi per legale judicium parium suorum vel per legem terræ*. Those who are curious on the subject cannot do better than turn to the very instructive passage in Sir James Stephen's History of the Criminal Law of England, in which he argues that the right to trial by peers was confined to that limited class of persons who

were vassals of the King's Courts, and that the only right which was guaranteed to ordinary free Englishmen was the right to trial by the law of the land, that is to say, by the ordinary course of justice. If I were disposed to approach the subject merely from an antiquarian point of view, I might say with perfect accuracy that Magna Charta has as much to do with the Bill now before us as Domesday Book has to do with the Permanent Settlement. But I do not think that great constitutional enactments such as Magna Charta, and, I may add, the Charter Act of 1833, ought to be dealt with in any such spirit. What is more to the purpose is to ascertain how they have in practice been understood and acted upon.

"It has been confidently asserted, and I find the assertion repeated over and over again in the papers relating to the Bill, that as a matter of law an Englishman has a constitutional right to be tried in criminal matters by a Judge of his own race, and that as a matter of fact this right has always been enjoyed by Englishmen settled in India. Now, I must take leave to deny both these propositions.

"As to the argument based on constitutional right, it seems to be a plant of very recent growth even in India, for in the earlier stages of the controversy the right which was supposed to be guaranteed by Magna Charta and to be affected by such measures as those prepared by Mr. Drinkwater Bethune, was this right to trial by jury, which is a very different thing.

"And outside India, in other parts of the world inhabited by men of English race or descent, I am not aware that this argument is ever used or recognized. I have made some inquiries on the subject, and I find that in no British colony is there any distinction between Europeans and Natives with respect to the jurisdiction exerciseable over European British subjects, or persons belonging to any similar class. There is the same law for both Europeans and Native, and if a Native is appointed to administer the law, he has exactly the same amount of jurisdiction as a European. For instance, in the neighbouring island of Ceylon, where, as in India, we have English settlers in the midst of a Native population, there are Native judicial officers qualified to exercise, and exercising, criminal jurisdiction over European British subjects. And in the colony of Hongkong I am told that there is at least one Chinaman who has acted successfully as a Magistrate.

"That is how the matter stands outside India, and in India itself it would be easy to disprove the assertion that European British subjects have never been subject to Native criminal jurisdiction in places outside the Presi-

dency-towns. But in order to do this fully it would be necessary to refer to a good many Acts and Regulations with which I do not propose to weary you. Inside the Presidency-towns, Magistrates and Judges have never been subject to any disqualification or disability, and Natives of the country have always been eligible to be appointed, and have been freely appointed, Justices of the Peace and Presidency Magistrates with jurisdiction over European British subjects as well as over others. So that this new-fangled theory about the meaning of trial by jury squares neither with the law nor with the facts, and I cannot help thinking that the arguments by which the 1872 compromise was helped out were mainly responsible for its invention.

"And, lastly, it appears to me that the particular compromise then entered into contained within itself the seed of future difficulties, which has since borne fruit. It is perfectly true that, if the proposal to confer jurisdiction on District Magistrates and Sessions Judges as such, the proposal which was lost by so narrow a majority, it is true that, if this proposal had been carried, its immediate practical effect would have been *nil*, because, as my hon'ble friend Mr. Hunter has pointed out, at the time when the Code of 1872 became law, there were only four Native members of the Civil Service, none of whom had risen to the post of District Magistrate or Sessions Judge, and three of whom were youths of a few months' standing. But there were such men in the service, Natives of India who had entered the service under the Statute which had founded the competitive system. Another Statute had been passed for the express purpose of admitting Natives of India to posts which had been previously confined by law to the Covenanted Civil Service, and it was well known to be the settled policy of the Government of India to encourage and facilitate the admission of Natives of India to such posts. Under these Statutes, and in pursuance of this policy, the numbers of the Native members of the service has since 1872 increased from 4 to 33, and some of them have already attained to the rank of District Magistrate and Sessions Judge. Thus, the question which might in 1872 have been shelved as being of mere theoretical importance, has now, to quote again Mr. Hunter's language, 'acquired present and practical bearing.'

"Another circumstance has taken place since 1872 which has a direct bearing on this question, and it is a circumstance immediately connected with the passing of the Code of 1882. Before that year the criminal procedure of the Courts in the Presidency-towns and the criminal procedure of the Courts outside those towns were regulated by different Acts or sets of Acts. There were the High Court Criminal Procedure Act and the Presi-

dency Magistrates Act, applying exclusively to the Courts in the Presidency-towns (or almost exclusively, for the High Court at Allahabad was an exception), and there was the Criminal Procedure Code, applying exclusively to the Courts outside these towns. In the former of these Acts there was no trace or vestige of any race disability, for a High Court Judge or a Presidency Magistrate, whatever may be his race, whether he is a European British subject or not, has jurisdiction over European British subjects. Whilst in the Criminal Procedure Code there was the marked and stringent exclusion of Natives of India as such from exercising this jurisdiction.

"Now, it was felt at the time when the last Code was under discussion that the old distinction between the Presidency-towns and the Mufassal, the distinction which plays so important a part in the earlier days of British Indian history, had to a great extent disappeared, and that the system of criminal procedure obtaining in all the Criminal Courts of the country could with advantage be brought under, and regulated by, one and the same law. Accordingly, the two sets of Acts, the Acts which ignored the race-disability, and the Acts which maintained them, were brought together. The High Court Procedure Act and Presidency Magistrates Act were repealed, and the new Criminal Procedure Code was applied to the Presidency-towns as well as to the Mufassal. This process naturally brought into still greater prominence what Sir Ashley Eden described as an anomaly, and made it only natural to inquire, whether, when other distinctions between town and Mufassal were being removed, this distinction should not be removed also, and whether the rule of giving powers according to personal fitness should not be applied to all parts of the country.

"This was the rule which we sought to apply by the Bill which was introduced last February. We sought to apply the principles laid down by the Charter Act and Queen's Proclamation, by removing, so far as existing circumstances would admit, the distinction drawn by the Code of 1872 between European and Native Magistrates and Judges with respect to their powers over European British subjects. And we sought to apply those principles in the most cautious and guarded manner. The Bill has been written and spoken about as if it had proposed to confer on every Native Magistrate and Judge unlimited powers over every British subject, and much of the language used about the measure is intelligible on no other hypothesis. Nothing can be further from the truth. The power to be conferred was of the most limited extent, and was so fenced and hedged about by numerous restrictions in the form of powers of control, powers of supervision, powers of transfer, rights of appeal, and the like, as to render any risk of

injustice practically impossible. Nor were the powers to be conferred on all Magistrates and Judges. The Bill proposed to confer them absolutely on District Magistrates and Sessions Judges only, but it empowered Local Governments in their discretion to extend the powers to other officials belonging to certain specified classes. It thus gave to a sound principle a limited application in the first instance, and provided for its gradual extension if and as its extension should be found practicable or desirable.

"However, when the opinions on the Bill came in, we found that on the one hand fears were expressed lest the discretionary powers which we proposed to give Local Governments should be unwisely and lavishly exercised, and that on the other hand the majority of Local Governments would be unwilling to exercise them at all. Under these circumstances, we came to the conclusion that it would be better to drop a provision which had excited unnecessary apprehensions, and which was likely to remain for some time a dead-letter. By so doing we gave up the attempt to apply the principle of selection by fitness in the precise manner and to the precise extent which we had originally contemplated, but we did enough to meet the immediate necessities of the case, and to maintain a principle which had been directly attacked and which it was our duty to uphold. The Bill as thus modified would enable us to give effect to the suggestion out of which these legislative proposals originated, namely, that when Native officials had risen to high and responsible posts in the public service they ought to be given equal power with their English colleagues of the same rank, and it would maintain the principle that, where personal fitness had been established, race ought not to operate as a disqualification.

"And the test of fitness which it would impose is a test to which no reasonable person could object on the ground of insufficiency. For to say that a Native of India who has been entrusted with the powers exercisable by a District Magistrate or Sessions Judge, who has risen to the position of being the chief executive officer or the chief judicial officer in an area the average population of which in Bengal is about a million and a half, to say that such a person cannot be trusted to exercise with justice and discretion the very limited jurisdiction which is exercisable over European British subjects outside the Presidency-towns, is to say that no Native of India, however long and complete may have been his training and experience, however high and responsible may be his position in the public service, is fit to exercise that jurisdiction. And that is a proposition which few will be bold enough to maintain.

"This, then, was the form to which, in deference to expressions of opinion to which we had undertaken and were bound to give the fullest consideration,

we were prepared to reduce a measure originally limited in its scope. And we were prepared to furnish an additional safeguard against the possibility of any risk of injustice by increasing the facilities already provided by the law for obtaining a transfer of the proceedings, or, as it would be called in England, a change of venue, in any case where such a transfer might appear to be desirable in the interests of justice. The provisions suggested for that purpose by the Chief Justice of Madras would be available for all persons, Europeans and Natives alike.

"Such were the modifications which, as has been already announced by His Excellency the Viceroy, we were and are prepared to recommend for adoption by the Select Commitee to which this Bill is to be referred. However, since that announcement was made, it has been strongly pressed upon us by persons whose opinion is entitled to great weight that, however moderate and cautious our proposals might be, yet there was a certain risk of an explosion of race-feeling taking place when the new law came to be put into force. And however much we might deplore and condemn the spirit which renders such a risk possible, yet we felt it to be our duty to minimise that risk by any means which might appear to be practicable and justifiable. Accordingly, we have agreed to accept a suggestion which has been made to us with this view, and which would have the effect of slightly extending the system of trial by jury. The suggestion is that a European British subject, when brought for trial before a District Magistrate or Sessions Judge, should have the right, if he thinks fit to claim it, to be tried by a jury, such as is provided for by section 451 of the Criminal Procedure Code, subject to two conditions—first, that no distinction is to be made between European British Magistrates and Judges, and secondly, that the punitory powers of District Magistrates over European British subjects are to be doubled, that is to say, are to be extended to imprisonment for six months or a fine of two thousand rupees. The punitory power of other Magistrates, that is to say, the power to imprison for three months or impose a fine of one thousand rupees, will be left untouched, and in cases tried before them the right to a jury will not be given.

"The adoption of this suggestion will maintain a complete equality between European and Indian District Magistrates and Sessions Judges, and may at the same time provide in certain cases a useful safety-valve against such a risk as that to which I have referred.

"The practical effect of adopting the suggestions will, I believe, be slight. As to trials before District Magistrates, two things must be borne in mind; first, that the total number of criminal charges against European British

subjects in the Mufassal is small, and secondly, that the total number of cases of any kind tried by District Magistrates is very small indeed. From these two premises it is not difficult to draw a conclusion. As regards trials before Sessions Judges, it will be remembered that all such trials must under the existing law be either by jury or with the aid of assessors; that any Local Government may by executive order direct that the trial of all offences, or of any particular class of offences, before a Sessions Judge shall be by jury; and that such orders have been applied to many parts of India, including some of the most important districts of Bengal and the whole of Assam.

"The question as to the merits or demerits of the system of trial by jury whether generally or as applied to British India is a large question into which it is not necessary for me to enter now. Whatever is to be said for or against the system, it must be admitted that it already exists in British India—that it is an institution to which Englishmen are by long custom and not without good reason attached, and of which no Government would wish to deprive them without strong and sufficient cause. But I need hardly say that its maintenance, either in its existing form or with the extension which we propose to give it, is dependent on the assumption that it is capable of being so worked as not to cause any failure of justice or other grave evil, and that an instrument of justice which is intended and ought to be a terror, will not be converted into a source of impunity to evil-doers.

"And this leads me to say one word in conclusion about a subject to which frequent reference has been made in connexion with this measure. I mean the necessity of maintaining what is called prestige. This is not the time nor the place for discussing the '*arcana imperii*,' and I do not propose to inquire in what sense it is true that British supremacy in India was obtained by, or rests on, the sword. I believe that in a far truer sense our empire is an empire of law. 'The secret of our strength in India,' it has been well said, 'is that we have endeavoured truly and indifferently to do justice, according to the best of our skill and understanding, to all sorts and conditions of men.' It is not on the enjoyment of legal privileges that British authority in India rests: it is not by the removal of such privileges that British authority will be affected. What will affect it will be anything which weakens the conviction that we are resolved and able to administer equal and impartial justice for the benefit of and against all classes of Her Majesty's subjects."

The Hon'ble MR. HUNTER said:—"My Lord, I understand that in voting for the Motion now before the Council, hon'ble members express at this stage

their approval of the general principle affirmed by the Bill. The important amendments which have just been indicated in the speech of my hon'ble and learned friend, are not yet before the Council in a substantive form. With regard to them, therefore, I shall make only two observations at present. On the one hand, I acknowledge that, as a whole, they will render the Bill a more acceptable measure On the other hand, I deeply regret that one of those amendments, by extending to European British subjects, and to them alone, the jury-system in trials before Magistrates, gives a fresh recognition to race-distinctions in matters of judicial procedure. But the question immediately before those members who agree with me on the main issue, is not whether they dislike the proposed amendments, or how far they think them capable of improvement by the Select Committee, but whether the proposals are of such a character as to justify them in withholding their vote from the general principle affirmed by the Bill as it lies on the table to-day. In my judgment the proposed amendments do not justify that course; and I observe that influential organs of Native opinion recognise the mistake which that course would involve. My hon'ble friend, Mr. Amír Alí, will doubtless acquaint the Council with the views of the Muhammadan community in this matter. Among other less homogeneous sections of the Indian races, opinion has scarcely yet matured, but I believe that the view which will ultimately prevail is that arrived at by the *Indian Spectator*, the leading Native newspaper in Bombay—

'Those of our countrymen,' says this Native journalist in his last issue, 'who will calmly survey in all its bearings the present aspect of the controversy, will, we are sure, find fair cause for congratulation in the settlement of this needlessly prolonged discussion. * * * District Magistrates and Sessions Judges, Europeans and Natives alike, are now on a par as to criminal jurisdiction. This substantive grievance has at last been redressed.'

"The last sentence expresses my own view. In 1872, this Council, in the absence of any representative of either the Hindu or the Muhammadan community, affirmed by a very narrow majority, a distinction based upon race, between judicial officers belonging to the same service—officers filling the same appointments, and exercising in all other respects the same jurisdiction. I hope that to-day the Council will, without a division or by a large majority, affirm the opposite principle. I do not disguise, and I do not underrate, the importance of the concession by which alone that unanimity could have been attained. But I think that the public agitations and painful personal estrangements of the past year will not have been encountered in vain, if the Council affirms by its vote to-day that the European and Native servants of the Crown in India, holding the important offices of District Magistrate and Sessions Judge, shall henceforth exercise the jurisdiction pertaining to their office without distinctions between them based on race or creed. Such an affirmation

will be in strict accordance with the Queen's Proclamation when Her Majesty assumed the government of India. The intention of that Proclamation has always seemed to me to be as clear as simple and noble words can make it. But doubts have lately been expressed as to its binding effect. The present Bill will set at rest those doubts, so far as concerns the impartial admission of Her Majesty's Indian subjects, irrespective of colour or creed, to discharge the duties of offices to which they have been duly appointed, and which they are admitted, apart from race-distinctions, to be admirably fitted to fill."

The Hon'ble MR. AMÍR ALÍ said:—"My Lord, I wish to make a few remarks on the Motion before the Council, as I feel it will not be right on my part to give a silent vote upon it without explaining to some extent my own views and the views of my community with regard to this measure. We have been for some months past living in an atmosphere of misconception. People who at any other time would have been most unwilling to impute improper motives to their worst enemies have not hesitated to accuse of dishonesty every individual who happened to disagree with them in respect of the merits of the measure in question; and, though the controversy has now assumed a new phase, the uncharitableness which has hitherto characterised the discussions has, I fear, not quite ceased yet. I may, therefore, be allowed to state that the views which I entertain on this subject, and which I take this opportunity of expressing in Council, are not the result of anything that has transpired within the last twelve months, formed in the heat of controversy and likely therefore to be biassed. My Lord, those views were first placed before Government in the year 1879. I was holding then the office of Chief Magistrate of Calcutta, and in that capacity my opinion was asked by Lord Lytton's Government upon the Bill which now forms the Code of Criminal Procedure. I ventured to point out then, what I have repeatedly urged since, that the invidious distinction created by the disability clauses of the Code, so far as they affected the higher judicial offices, was a mistake both from an administrative as well as a political point of view; and though, at that time, as far as I know, there was no non-European District Magistrate or Sessions Judge, yet it seemed to me that the time was not far distant when there would be several such officers, and that it would give rise to considerable inconvenience if the disability clauses were allowed to remain unmodified on the Statute-book. My Lord, the difficulty which I apprehended in 1879 clearly made itself felt in 1883—sufficiently clearly to induce the Government, acting in conformity with the principles laid down by a succession of Viceroys and Secretaries of State, to bring in a Bill to remove, within a very limited extent, the disabilities under which non-European officers laboured, and to place them, for certain purposes, on a footing of equality with

their European fellow-officers.✓ This measure gave rise to a most vehement opposition on the part of the Anglo-Indian community. Nobody, as far as I know, in our community quarrels with them for their opposition, but we cannot help regretting that men who ought to have known better, and who certainly owed some gratitude to the people of India, should so far forget themselves as to indulge in language alike discreditable to themselves and their community, and which had the effect of converting this legal controversy into a race-difficulty. So far as we were concerned, we hailed with satisfaction the introduction of this measure as the first *bonâ fide* endeavour on the part of the British Government to give practical effect to the policy and principle enunciated in 1833, and emphatically re-affirmed by Her Majesty in Her Proclamation. It will, I hope, not be considered inappropriate by the Council if I say here that I read with considerable surprise the other day that, in Sir Fitzjames Stephen's opinion, the Queen's Proclamation 'was a mere expression of sentiment and opinion,' and nothing more. It is somewhat strange that a writer of his eminent ability should stoop, however unconsciously, to such a misrepresentation regarding the character of this great public document, when Her Majesty's own words are on record to falsify the assertion. Mr. Theodore Martin gives the history of the Proclamation in the following words :—

'The Act for the better Government of India had become law on the 2nd of this month (August 1858), and the Proclamation had to be settled, which was forthwith to be issued by the Queen in Council, setting forth the principles on which the government of that country was for the future to be conducted. The draft of this document was transmitted from England to Lord Malmesbury, the Minister in attendance on Her Majesty, and laid by him before Her upon the 14th. It did not seem to the Queen to be conceived in a spirit, or clothed in language, appropriate to a State paper of such great importance."

"And then follows Her Majesty's letter to Lord Derby, conveying Her instructions for the preparation of the Proclamation :—

'The Queen has asked Lord Malmesbury to explain in detail to Lord Derby her objections to the draft of the Proclamation for India. The Queen would be glad if Lord Derby would write it himself in his excellent language, bearing in mind that it is a female Sovereign who speaks to more than a hundred millions of Eastern people on assuming the direct government over them, and after a bloody civil war, *giving them pledges which her future reign is to redeem, and explaining the principles of her Government.* Such a document should breathe feelings of generosity, benevolence and religious toleration, and point out *the privileges which the Indians will receive on being placed on an equality with the subjects of the British Crown,* and the prosperity following in the train of civilization.'

"These words of Her Majesty leave no possible room for doubt as to the character of the pledges given by her to her Indian subjects. The further re-

mark of Sir Fitzjames Stephen, that the Proclamation has no legal force whatever, may be technically correct from the standpoint of a *special pleader*; but it must be remembered that that it was a solemn Act of State, prepared by Her Majesty's Government, guaranteeing in the most formal manner the rights and privileges of the people of India upon the same basis as those of Her Majesty's British subjects, and it will require greater casuistry than ever Sir Fitzjames Stephen can bring to bear on the subject before the people of India will be convinced that Her Majesty's solemn words have no legal value or force when the rights of the different communities subject to her sway are weighed in the scales of justice. My Lord, it has been urged by some people that the measure in question would have had the effect of depriving European British subjects of a cherished privilege to be tried by their peers. I may be allowed to say that no person —certainly no person who is not an Englishman—can be more anxious than I am to see Her Majesty's European British subjects secure in the enjoyment of any legislative privilege which they possess, and which does not conflict with the just interests of Her Majesty's other subjects. It seems to me, however, that the argument to which I have referred is based on a misconception. If people will insist on looking at a thing upside down, it must necessarily appear wrong. Such seems to me to be the view entertained by those people who consider that the effect of this measure would be to deprive European British subjects of a privilege which they now possess. Your Lordship's Government did not propose to take away any privilege from the European British subject, or to lower their status in any shape or degree. What the Government proposed to do was to raise the status of a few specially qualified officers, whom the Local Governments thought were fitted to hold certain high offices, and who had proved their capacity to hold such offices by the probity of their conduct and their intellectual attainments—in fact, to assimilate them for certain purposes under the Criminal Procedure to European subjects. Sir Fitzjames Stephen himself had in the year 1872 declared certain people, who were neither born in the British Isles nor were the descendants of persons born in the British Isles, to be European British subjects within the meaning of the Act. The present measure was not intended to have any such far-reaching or extravagant effect. It simply meant to declare that whenever a Native of India attained a high position in the judicial service he should be raised to the status of a European British subject for the purpose of discharging certain duties which European British subjects alone could under Sir Fitzjames Stephen's Code discharge. My Lord, it is on these grounds and for these reasons that the Muhammadan community—I may say the Native community at large—have supported the measure. The interest which we have taken was no doubt of a theoretical character, and therefore we

would be glad if any satisfactory and practical solution can be provided for the difficulty which has unfortunately arisen between Government on one side and the Anglo-Indian community on the other. The proposed arrangement, however, owing to the vague and somewhat inaccurate manner in which it was put before the public, has naturally excited some alarm in the minds of the Natives of India, and the question has assumed a greater practical importance. I perfectly admit that by the arrangement in question the principle of the Bill has been thoroughly maintained with the acquiescence of the Anglo-Indians, which by removing the bitterness of the controversy constitutes no small gain to the cause of good government. At the same time, I cannot conceal from myself the fact that, unless it is carefully safeguarded, a machinery which is devised for securing the safety of European British subjects may be turned into an engine for the denial of justice to the Natives of India. It will be the duty of the Select Committee to devise sufficient safeguards against such an undesirable contingency which would be prejudicial to the best interests of the Natives and Foreigners alike. In view of the extension of the jury-system to Europeans and the expectant attitude of the Native community, it is a matter well worthy of the consideration of Government whether the jury-system or the right to claim a commitment to the Court of Sessions on the lines of the recent Summary Jurisdiction Act in England, if necessary in especially selected tracts, may not with advantage be extended to the Natives of India. The time when this matter should engage the attention of Government is one for their consideration, but I trust that an enquiry how far the boon can be granted may not be long deferred. I desire to take this opportunity to mention that I shall make certain proposals in Select Committee which are in *pari materia* with the proposed arrangement, and do not affect the European British subject, but are intended simply to ensure efficient administration of justice. I refer especially to certain modifications in section 526 of the Code. I trust that the suggestions I intend to put forward will be accepted by the Committee, as I feel sure that they will to a large extent satisfy the Native community, and at the same time place the administration of justice upon such a basis as would command the confidence and approbation of all classes of Her Majesty's subjects."

The Hon'ble MR. MILLER said:—"I have listened attentively to the statement made by the hon'ble and learned mover, and I fail to find anything in what he has said to induce me to change my opinion that the wisest and most statesman-like course would have been to have dropped this Bill long ago. Still I would at this stage do nothing to bar a settlement of the question; and, if it were possible now to refer the Bill to a Select Committee on a clear understanding of the principles on which the question is to be discussed, I should be

willing to support that course, leaving details to be settled in Committee; but I would state, in the clearest manner possible, that if there is, as I fear is the case, reason to believe there is any double meaning possible in the terms of settlement which have been announced to the public, the difficulties which have been encountered will be tenfold increased, and I cannot support the Motion that the Select Committee be directed to report in a week, unless the clearest agreement has been come to. It will not be possible otherwise to report promptly, and if it be attempted it will only lead to worse mischief."

The Hon'ble MR. GIBBON said :—"My Lord, I am not prepared to support the Motion that the Bill as it now stands shall be referred to a Select Committee; certainly not with instructions that the Committee report in a week. In an important matter such as this is, we would require to have the proposals of the Government fully laid before us. We require time to consider the provisions of the measure more carefully than we have as yet been able to do. Until now we have had before us only the Bill as originally proposed, with the concessions your Lordship, in our meeting of the 7th December, declared yourself ready to make to public opinion. Until now we have had no declaration from Government as to any further concessions it was ready to make. We had the newspaper reports of an agreement come to with the public; but I venture to say that, on comparison, it will be found that the statement now made by the hon'ble mover of the Bill is very different from the agreement published. I am ignorant of the rules of your Lordship's Council, but it seems to me that the Committee is called upon to draft a Bill, not to amend or report upon one. To draft a Bill we require to review the whole Criminal Procedure as far as it relates to Europeans : we not only require to examine the measure as it relates to the punishment to be meted out to criminals, but require to review the relations existing between a District Magistrate and his subordinates, his power of transferring a case from one file to another. Why should the European British subject be allowed trial by jury before a District Magistrate and not before his subordinate? Are we to understand that the District Magistrate is not to try minor cases? I am not prepared to send the Bill in its present form to the Select Committee, nor to see it reported on in a week."

The Hon'ble RAÍ KRISTODÁS PÁL said :—"My Lord, I approach this subject with a mingled feeling of satisfaction and sorrow—satisfaction because the settlement referred to concludes a message of peace with a body of gentlemen who, however misguided and maddened on the present occasion, are undoubtedly important factors in the cause of the advancement and regeneration of this country, and sorrow because, unless carefully safeguarded, it may open a wide door to injustice. I love peace, but honour more, and justice above all. It is

not my object to dwell on the history of the present scheme of legislation, on the bitter feelings and animosities which it has evoked, on the gradual minimization of the effect of the Bill, small by degrees and beautifully less, or on the influence which the angry discussions of the past ten months may have on the political prospects of the people. I say—let bye-gones be bye-gones. My present concern is to consider how far the proposed settlement will secure the interests and ends of justice. The primary object of your Lordship's Government in the proposed legislation has been to wipe out the brand of race-disqualification in the judiciary within certain limits in the trial of European British subjects. And that object, I am happy to observe, has been steadily kept in view, and for it our grateful thanks are due to your Excellency's Government. I must at the same time confess that the scope of the original Bill, itself a small measure, has been materially reduced by the modifications proposed from time to time. As far as I understand these modifications, both the Native and European Sessions Judges and the Native and European District Magistrates will be so far placed on a footing of equality that they will exercise equal jurisdiction over European British subjects in matters criminal. This equalization, however, has been attained not by extension, but by reduction, of power; by taking away the power of independent action of European Magistrates, and not by adding to the power of Native Magistrates. In so far, I am constrained to say, the solution of the difficulty has been achieved by an unsatisfactory process. The anomaly of race-distinction is doubtless removed as between Magistrates, but it is effected not by adding to the power of Native Magistrates, but by changing the *venu*. Race-distinction becomes most obtrusive only in the trial of a certain class of cases, and those cases are practically transferred from the file of the Native Magistrate to that of his juniors the Joint-Magistrate. Thus, the race-distinction is made more pointed and painful. If the Native Magistrate be invested with a power which he will not be called upon to exercise, that power to all intents and purposes will be an unreality. Doubtless, the European Magistrate will stand in the same position, but to him it will be obvious that it is an administrative or political exigency, and not a question of colour. It is proposed to safeguard the extension of the jurisdiction of the Native British Sessions Judge and the Native District Magistrate by giving the European subject the right to claim trial by jury in all cases. This is a right, I am quite aware, inherent in the Englishman, and an assembly of English legislators cannot but sympathise with it. I am also an advocate of jury-trial for my countrymen, and am of opinion that the jury-system ought to be extended throughout the country. But there are cases in which Englishmen in their own country cannot claim the benefit of a trial by jury, and even if the proposed modifications should pass into law, the European British subject, when

brought before a European Assistant or Joint Magistrate charged with offences of a certain class, will have no right to claim a trial by jury. The question is whether, when similarly charged before a District Magistrate, whether a European or a Native, he should consistently be permitted to demand a jury. This provision will introduce a new anomaly. In seeking to abolish one anomaly we will create another. Under the proposed settlement, the European District Magistrate will lose a power which he has exercised since the Act of 1872 without any complaint on the part of the European British subjects, while the Native Magistrate will be constantly put in mind that his power has been circumscribed because he is a Native. It may also lead to administrative inconvenience, which is worthy of serious consideration. Then, under the Act of 1872, one great reproach to the administration of criminal justice in this country, as far as the trial of the European British subject was concerned, that of dragging for trial the complainant and the accused with the whole host of their witnesses to the Presidency capitals at great inconvenience, expense and hardship, was removed because it vested the District Sessions Judge with jurisdiction with or without a jury. Under the proposed settlement, in every case before a Court of Sessions the European British subject shall have the right to claim a trial by jury. In a district where a sufficient number of Europeans and Americans may not be found to constitute a jury, the result, I take it, will be to transfer the case to a district where a jury may be available. In this way the old scandals of trials at inconveniently distant places will, I fear, be revived. Many a poor complainant may think it better to put up with the wrongs they may have sustained rather than face the hardships and expenses of a journey miles and miles away from their homes for the sake of possible redress. In this respect the proposed settlement may lead to a denial of justice. In this respect it will manifestly be a retrograde move. It will, in fact, put back the clock of improvement introduced in 1872. There is another point urged by some of my countrymen, namely, the imminent risk of failure of justice in the case of a European British subject at the hands of a European jury under the peculiar constitution of Anglo-Indian society, and a small jury of those persons. I shall briefly touch upon this point. There have undoubtedly been cases on record in which there have been egregious failures of justice. I will not say that good men and true, when sworn in as jurors, will break their oath, and amidst large communities of men of the same race and religion engaged in different occupations and not bound by near kinship or absolute identity of profession or interest it is certainly easy to empanel a jury of good men and true; but amidst a small and sparse European population in the outlying districts of India, and particularly in critical times of excited feelings, in a small jury of these persons the risk of failure of

justice is one which no Legislature should overlook. It is observable that the British Legislature has found it sometimes necessary to suspend jury-trials in Ireland. Under these circumstances, my Lord, I cannot look upon the settlement without grave misgivings. My humble belief is that it will add to the difficulties of a fair, speedy and honest administration of justice, and thus prove injurious to the people. I shall, however, propose no amendment or specific Motion now. Bearing in mind the singleness of purpose which has led your Lordship to this project of legislation, the anxiety which your Lordship has evinced to remove race-disqualifications in the discharge of judicial duties, and the earnestness with which your Lordship has sought to give effect to the noble behests of Parliament and our gracious Queen-Empress, I feel I should pause and consider. I would, therefore, reserve my objections to the details of the settlement till I see the amendments take a definite shape at the hands of the Select Committee. In the spirit of the eloquent peroration of my hon'ble and learned friend the mover of the Bill, I would venture to remind the Hon'ble Council that the stability of the British Empire in India rests on the adamantine rock of justice, and I earnestly hope that that truism will not be lost sight of by the Select Committee in framing their amendments. In conclusion, I wish to make one remark. I have no objection to the Motion that the Select Committee should report upon the Bill within one week. But I venture to express a hope that after the Bill is recast by the Select Committee it will be forwarded to the Local Governments and local officers for an expression of their opinion as to how far its provisions will be conducive to administrative convenience and to an efficient administration of justice. Great apprehensions are widely entertained that the Bill framed on the basis of the settlement will be unworkable and will defeat the ends of justice. For this reason I think it is highly desirable, my Lord, that the opinion of the local officers, who are in the best position to form a just estimate of the practical tendency of the Bill, should be taken on this vitally important point. As the Bill has been allowed to hang on for the last ten months, surely it will not prejudice any interest to delay its passing for two months more."

The Hon'ble MR. EVANS said:—"My hon'ble friend Mr. Miller has alluded to a misapprehension or misunderstanding regarding the settlement which I had thought had been finally concluded by this matter. That misunderstanding was in the first instance more extensive. It has now been narrowed down to a point which I have had but very little time to consider, in fact only a few hours, and which, therefore, I should not be inclined to pass any hasty opinion upon. I will only say that it does not, so far as I have yet been considering it, appear to me personally to be of primary importance, but the

whole value of the modification by way of settlement which we are discussing to-day appears to depend upon whether or not they are accepted by the European community. I have had no time—a few hours only have elapsed since the matter has arrived at this stage—and I have had no opportunity of consulting the European community or their leaders upon it, and my view is, as I have said, that the advisability of sending the question into Select Committee on the lines indicated by the hon'ble mover of the Bill appears to depend upon the acceptance of those terms by the European community, and I feel I shall do no good by making any observations upon it at present. I shall, therefore, feel very much obliged to your Lordship if your Lordship will adjourn this debate. I do not know whether I shall be in order in formally moving an adjournment, but, if your Lordship will adjourn the Council meeting, I hope some settlement will be arrived at which will prove satisfactory."

His Excellency THE PRESIDENT said :—" I feel some hesitation in complying with the proposal which has been made by my hon'ble and learned friend, because the effect of that proposal will be to shut myself, and those of my hon'ble colleagues who may desire to speak on this occasion, out of the debate until the day to which the Council may be adjourned. I am always, however, most anxious to treat every member of this Council with the utmost consideration and courtesy. My hon'ble and learned friend says that he has not had time to consider a question which has arisen while he has been absent from Calcutta. Under these circumstances, it seems to me that I should not be justified, in courtesy to my hon'ble and learned friend, in asking him to address the Council at the present moment, but, in agreeing now to an adjournment of the Council, I do so without prejudice, without in any way committing myself with regard to the point to which Mr. Evans has alluded. I agree, therefore, to the adjournment of the debate till Monday next at half-past 11."

The Council adjourned to Monday, the 7th January, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM ;
The 11th January, 1884.

Government of India Central Printing Office.—No. 477 L. D.—11-1-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Monday, the 7th January, 1884.

PRESENT :

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Darbhangá.
The Hon'ble J. W. Quinton.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.I.E.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The adjourned debate on the Bill was resumed this day.

The Hon'ble MR. EVANS said :—"My Lord, I have great pleasure in stating that the point upon which I found some misapprehension had arisen, and which, as I said, was not one of primary importance, has been cleared up, and no misapprehension exists at present; and I am very happy to say, as I understand the matter, there is no doubt that a settlement has been arrived at in this matter which will, I sincerely trust, be satisfactory, and which ought to have the effect of putting an end to the

bitterness of this controversy. Had it been proposed to proceed with the Bill as it stands, as apart from the settlement to which I shall presently refer, I should have felt bound to oppose to the utmost of my power the proposal to refer it to a Select Committee. Many reasons for this position have been given by me in Council in March, and fuller and more detailed reasons are to be found in the local opinions, the minutes of the High Court in Calcutta, Sir Fitzjames Stephen's letters, and a recent most able and exhaustive minute by Mr. Justice Field. It is unnecessary for me to recapitulate them, though later on I shall also have some remarks to make on the speeches made in this debate. I need only say that they are weighty, and touch matters which the European community regard as of vital importance to themselves. The opposition aroused by what European British subjects considered an unnecessary attack on their rights—their most valuable and necessary rights—was of a most strong and serious character. I, in common with many, had hoped that, on receipt of the local opinions of the most experienced officers in India adverse to proceeding with the Bill, the Government would have withdrawn it, and I still think that that would have been the wisest course. But the Government of India resolved to cut down the Bill so as to give jurisdiction over European British subjects to such Natives only as should attain the position of Sessions Judge or District Magistrate. Of this the public was first informed by Lord Northbrook's speech in November, and it was formally announced by His Excellency in the first meeting of the Legislative Council after the return of the Government to Calcutta. By this resolution the practical evils of the Bill were much lessened. The proposal, to quote the hon'ble mover's speech in introducing the Bill, to 'completely remove from the law all distinctions based on the race of the Judge,' was abandoned. That scheme was based on the "disqualification," to use my hon'ble friend's word, in the future of the bulk of the European uncovenanted servants of the Crown from exercising powers which they had long been exercising to the benefit and satisfaction of the State, in order to do away with an invidious distinction between them and the bulk of the Native uncovenanted servants who had never exercised these powers, and as to whom it was almost universally recognised that it would not be to the interest of the State that they should be empowered to exercise these powers; and also by disqualifying the whole European non-official community from exercising powers which they similarly had long exercised to the admitted benefit and satisfaction of the State, in order to do away with the invidious distinction between them and the non-official Native community, as to whom it had never even been suggested that it was desirable they should exercise these powers. This scheme has received the assent of no single responsible person, so far

as I can recollect, whose opinion was taken, and the hon'ble and learned mover has himself in this debate admitted it to be 'defective.' I can only marvel how such a scheme originated, or how it passed the Indian Council, and how it came to be laid before this assembly. Not only was this wild scheme abandoned, but also all attempts to empower any other Native officers, except District Magistrates and Sessions Judges, was also abandoned. The Government should, it would seem, then have abandoned the Bill, for the hon'ble learned mover said, in introducing it, that 'no change in the law could be satisfactory or stable which did not remove at once and completely from the Code every judicial disqualification based merely on race-distinctions,' and said Government would not be justified in re-opening this difficult question and the settlement of 1872, unless it saw a way to a solution which contained within itself the elements of stability and durability. And he deprecated constant tinkering of the law on such a subject. But this limited Bill was still open to the grand objection—that the class affected had an intense repugnance to having their guilt or innocence decided by a Native Sessions Judge or District Magistrate, and had good and weighty grounds for the objection. The Government of Bombay had come to the conclusion that it was necessary on this account to give the European British subject a right to a jury before a Native Sessions Judge, and had said that Government must recognise the fact of the unwillingness of Europeans to be tried by Native Magistrates, and the evils that would arise from trying to force them to be so tried, and that the Europeans honestly believed in the reasonableness of the objection. It was obvious from the first that this curtailed Bill could never be accepted by the European community. The Government insisted on proceeding with it, and the class to be affected by it doggedly resisted. They were animated by the same spirit which has always caused the English race to resist to the utmost all attempts by the Government of the day to encroach on what they believed to be their right and liberties. Things came to a deadlock, and the tension became extreme and threatened grave consequences to the country. It became apparent to me, and I think to every one who had adequate means of information, that the situation had become extremely dangerous, and was becoming more perilous every day. Under this crisis I thought it to be my duty to endeavour to bring about some solution of the question. Therefore, I took it upon myself, after making such enquiries as I could, to make certain proposals to the Government—proposals which were not accepted. But though they were rejected, counter-suggestions emanated from Government, which resulted in the present arrangement. I distinctly wish to state that no proposal or suggestion of any kind emanated in any way from the Defence Association, of which I am not

a member. But, when these proposals were laid before the Defence Association, it appeared that the bulk of the European community which they represented were, notwithstanding the irritation created by this measure, the same sensible, moderate, loyal Englishmen as they had been in 1872. "In 1872, the European British subjects, in view of the grave administrative inconvenience then existing, agreed for the public good to give up to a certain extent their right to trial by jury, provided that the persons to try them without jury were European British subjects like themselves. When the Government now determined to re-open that settlement and to give jurisdiction to certain Natives in the two classes of District Magistrate and Sessions Judge over European British subjects, the natural result was that they were entitled to fall back on their valued privilege of trial by jury. It was felt that the proposed arrangement in effect gave them back this privilege. The main point that they had fought and struggled for was the right to be tried by their own fellow-countrymen, that is, that their own fellow-countrymen should decide whether they were guilty or not guilty. This right or privilege was secured to them by this arrangement, for they became entitled to trial by jury when claimed before the District Magistrate as well as before the Sessions Judge, and they rightly felt that they had substantially gained what they were fighting for; that it would not be right to incur the grave evil to the country which might result from the prolongation of the contest for any object that was not of paramount importance to them. The Government went further and gave them what they had not struggled for. They gave them back the privilege of trial by jury, not only in case of their being tried by the Natives, introduced into these two classes, Sessions Judges and District Magistrates, but in case of their being tried by any member of these two classes, whether Native or European. The jurisdiction of the District Magistrate was enlarged from three to six months' imprisonment, apparently to avoid any anomaly, but this did not hurt the European British subject, as he could now claim a jury before the District Magistrate.

"No one can rejoice more sincerely than I do that a settlement has been come to, and no one can wish more heartily that it should be speedily carried through, and that the present lamentable tension should at once cease. The settlement has cost me much time and labour, besides the anxiety and harassment which awaits any one who interferes as a volunteer to compose so bitter a dispute. All that remains to be done is for the Select Committee to see to the framing of the necessary sections to carry out the arrangement, and to see to the subordinate amendments and alterations which may be necessary to harmonize the new clauses with the Code; and I do not think that any difficulty ought to arise in carrying out the work, and see no difficulty in

reporting on Friday week. No one can deplore more than myself the bitterness of the controversy, but I hope and trust it will cease from this day. I have all along felt assured that the object which His Excellency had in view was the good of the country. I have never doubted this, though I have thought he was grievously mistaken. I have always thought that, if His Excellency had known how real and sincere and important a fact the repugnance of the European community was, he would not have introduced this Bill. I am confirmed in this view by the manner in which he has dealt with the matter since this fact has become manifest to all. I am satisfied by inference from facts which have come under my observation that, by some misfortune which I am not able to explain, the warning which ought to have been transmitted to this country from the Indian Council or from the Secretary of State for India did not arrive before the introduction of the Bill. If so, this was a grave misfortune, but it is one which no one in this country is responsible for. Here I wish I could stop, but I cannot pass without a word about the previous speeches in the debate, lest my silence be misconstrued. The hon'ble mover in his speech stated that the principle of the Bill could not be better described than in saying it aimed at the '*removal of all disqualifications based on race, and the substitution of a qualification based on personal fitness.*' He also said that 'it was never described by any Member of Government as the abolition of race-distinctions for judicial purposes.' But turning to his own speech in introducing the Bill, I find the words—'These proposals will completely remove from the law all distinction based on the race of the Judge.' Now, as to the matter of disqualification. The Natives are not disqualified from any office which we are now concerned with. They can be made District Magistrates and Sessions Judges. The so-called office of Justice of the Peace has long ceased to be an independent office. It has become in the Mufassal a mere formula for conferring magisterial jurisdiction over British subjects. That this is so is clear from the fact that the term could be cut out of the Code and the jurisdiction given to the Magistrates by other words without any mention of the office, without any one being, as my hon'ble and learned friend put it, a penny the worse. The hon'ble and learned mover is, I think, aware of this, because he expressly says later on in his speech that Native Magistrates are not disqualified by the Act of 1872 from holding an office. It is not any such disqualification, that is, a disqualification for an office, which he seeks to remove, but a 'disqualification to perform a part of the duties ordinarily attached to the office.' How do the facts stand? The Magistrates in the Mufassal are of three grades. The general limitations on the powers of the different grades are in respect of the class of offence or the amount of punishment. Certain Magistrates

of the 1st class are called District Magistrates. Now, European British subjects are entirely exempt from the jurisdiction of the Magistrates of the 2nd and 3rd classes, and, besides this, when brought before a Magistrate of the 1st class, they are entitled, as the privilege of the accused, to claim that the 1st class Magistrate who is to try them should be not only a Magistrate of the 1st class but also a Justice of the Peace and an European British subject. This right is guaranteed to them by legislative enactment. This is the special privilege of the accused which he is entitled to in a Magistrate's Court. In the Sessions Court he has the privilege of claiming that he should be tried by a European British subject, and in the Assistant Sessions Judge's Court by an Assistant Judge who is an European British subject and is of three years' standing. Now, is it not surely playing with words when my learned friend describes a Bill for taking away this special privilege of the accused to claim that the Native Magistrate shall be an European British subject, when he describes such a Bill as 'merely declaring that the simple fact of belonging to an artificially defined circumscribed category of human beings—that this fact, standing alone, apart from other considerations, shall not constitute an absolute disqualification for the performance of certain important magisterial functions? The Magistrate, whether Native or European, is a Magistrate with the full powers of his grade and the full pay, but there is a special class who can claim the privilege of appearing before a certain class of Magistrates. The expression 'artificially defined circumscribed category of human beings' is a roundabout expression which would fit most legally defined classes whose members have, as members of such class, a right to any privileges, because legal definitions have generally to be more or less artificial, and a defined category of human beings is, I take it, in plain English, a special class. I fear it will turn out that even His Excellency belongs to an artificially defined circumscribed category of human beings, not only as British subject, but as a peer of the realm. In this latter capacity he has also a right to a special tribunal of his own peers in certain cases. The analogy would be more complete if some portion of the Judges in England were ordinarily peers, and if an Act had been passed altering the present law and enacting that no English Judge who was not a peer could try a peer without his consent. Would it be fair to describe such a law as imposing on the other English Judges a disqualification for the performance of certain judicial functions—to ignore the privilege of the peer and treat it as a matter of 'removing a disqualification' from the other Judges arising solely from their not belonging to an artificially defined circumscribed class of human beings, that is, of peers? The burden of proof, I take it, is on him who wishes to take away from any class a legal right they possess, and it cannot be got rid of by involving

the matter in a cloud of words. The so-called principle of the Bill seems founded on a misconception. But the matter does not stand there. The hon'ble mover says his object is to declare that this fact alone, apart from other considerations, should not disqualify from exercising certain powers. There are other considerations of the utmost weight and gravity to be found in the local opinions, which the hon'ble mover does not seem affected by. I will only mention one, the opinion of Mr. Badshah, a Native Covenanted Civilian and Assistant Magistrate of Goalundo, who wrote—

'To equalize rights, to remove the irritation and friction which attend their inequality is certainly high and noble policy. But if the privileges of a class are infinitesimal, if they injure no person and irritate a very small body of men, if their removal is associated with the degradation of justice and tends to bring judges into contempt, it is still higher policy to let alone the privileges, so that the sacred name of justice may not be sullied nor Judges become the targets for universal ridicule and abuse. It has been the aim and object of every civilised nation to secure their judges from attacks on their impartiality. I cannot suppose that the present Government of India, if they were informed of all the facts, would depart from the declared policy of the civilised world.'

"Now, as to the Charter Act and the Queen's Proclamation. I desire to treat both of them with all respect, and I have always regarded the Queen's Proclamation as a solemn declaration of policy. The Charter Act removed any disability that there might be on Natives from holding any place, office or employment, and the Proclamation announces it to be the will of Her Majesty that 'so far as may be' all her subjects may be freely and impartially admitted to all offices in her service. As I have pointed out, the so-called office of Justice of the Peace is not now really a substantive office. The substantive office is that of Magistrate. Then, there is no contravention either of the Act or Proclamation in the special privilege claimed. If the Justiceship of the Peace were really an office, it has never been open to Natives in the Mufassal; and, if this were a violation of the Act and Proclamation, it would be strange to find that the Government of India had been during all these years violating the Act and Proclamation, and that this fact had now been discovered by my hon'ble and learned friend for the first time since the introduction of the Bill. The hon'ble and learned mover expressly admitted this, and could say nothing more than that the Act of 1872 went perilously near to an infringement of the rule.

"How, then, about the fallacy which, he says, underlies the reasonings of the Lieutenant-Governor and the High Court? He says that the general rule is that the Native is not to be disqualified for the office, and is to be freely and

impartially admitted. If he is not disqualified, and is admitted to the office, as it seems conceded, the rule is not infringed, and we are not called to justify an infringement by proof of an exception; and the fallacy is imaginary. With regard to a large portion of the hon'ble mover's speech which dealt with the old struggle as to subjecting the British subject to the country or local Courts, he has answered it himself by showing that struggle then was not whether, if the European was subjected to the local Courts, he should be tried by a Native or European, but whether he should be at all subjected in any shape to the local Courts. This was never accomplished till 1872, and the European British subjects then stipulated that, as they consented not only to be subject to local Courts, but to give up their rights to a jury in Magistrates' cases, they should be allowed a special privilege as to the constitution of the tribunal. Most of the old discussions have, therefore, no bearing, as they were addressed to a totally different point. Throughout his speech I find no indication of his recognition that the European British subject had any right to object to privileges being taken away, or had any voice in the matter. He treats his legislation as necessitated by the Charter Act and the Proclamation, and he seems to treat the concessions of right of trial by jury as a safety-valve attached to the Act in cases of accidents, which he will remove as an exception if it does not work satisfactorily, and meanwhile will sit upon to show how necessary it is. This is not my view. I hope it will work satisfactorily so far as it is required to work, but I regard it as an integral part of the settlement, and consider that, if it was objected to, the whole Bill would have to go, and the European British subjects would be entitled to revert to the *status quo ante* and to resist as vigorously as ever any invasion of their rights. They will not, I am certain, surrender the right to a jury, except on the same terms as in 1872, or on terms which would equally secure their just liberties.

"There is one observation of the Hon'ble Dr. Hunter which I must allude to. He says he understands that hon'ble members who approve of this Bill going into Select Committee approve of the principle of it. This may ordinarily be the case, but not in the present instance. A settlement of this sort is the resultant of opposing forces. I no more affirm my learned friend's principle than I expect him to affirm mine. I only assent to this Bill going into Select Committee to procure a settlement of a question which it is plain to see will produce most serious results if the controversy is continued.

"My learned friend Amír Alí states the object of the Bill very differently from the hon'ble mover. He says the object of the Government was to 'raise the

status of a few specially qualified officers; in fact, to assimilate them for certain purposes under the Criminal Procedure Code to European British subjects.'

"Another statement of the hon'ble mover I must mention. He has said that 'he need hardly say that the maintenance of trial by jury either in its existing form or with the proposed extension is dependent on an assumption as to its working.' This language has given rise to great mistrust and alarm. It has been taken to point to a decision on the part of the hon'ble mover not only to ignore the settlement now arrived at, but also, to deprive European British subjects and also Natives of the existing right to trial by jury. This mistrust and alarm he has aggravated by another statement that Magna Charta might be said to have as much to do with the Bill as Domesday Book with the Permanent Settlement.

"It has been laid down by high authority that the right to trial by jury was part of the unwritten law of the realm confirmed to the subject by Magna Charta under the description of 'legem terræ,' and it was described by Sir William Jones in his celebrated charge in 1792 as one of the three anchors which preserve the Constitution from shipwreck.

"I do not wish to discuss the question, but only to say that I both trust and believe that the Government has no intention of interfering with a right which is specially valuable to Englishmen living under a despotic form of Government.

"I understand that now the hon'ble and learned mover did not very clearly recognize the settlement, because at the time he made his speech it was difficult to do so. My hon'ble friend Kristodás Pál has paid the European community a compliment by recognising them as important factors in the advancement of the country. I have always been on friendly terms with the Native community, and have always sought to do individuals of that community a good turn when I could. I don't think I have done them a bad turn, unless they consider my opposition in this case one. But my hon'ble friend is hard to please. He is not content that Native and European District Magistrates are placed on the same platform, and that a Native District Magistrate should enjoy all possible dignities of the office, and be entitled to preside as judge at the trial of a European. He wishes that he should act as jury too. My hon'ble friend forgets that the ancient common law form of trial, the 'legem terræ' of Magna Charta, was a trial by a judge holding office from the Crown and a jury not nominated by the Crown, and that the jury, who were always

the judges of fact, were liable to challenge by the accused, to a certain number of challenges without cause shown, besides challenges with cause. Now, a summary trial is a case in which the Magistrate is judge and jury. As a judge he is a nominee of the executive, and it is difficult for the accused to object to the judge, except on very special cause. But if the Magistrate wants to act as juryman too, I may fairly challenge him, and I never yet heard of a man insisting on his right to try the accused as a juryman in spite of the accused's reluctance. As to the latter part of his speech, I read it as meaning that he fears that this Bill as modified will be less satisfactory to the Native community than the present state of affairs, that is, than the compromise of 1872. If he is serious in this, and can persuade His Excellency on the final debate to withdraw the Bill in toto, I shall certainly not object, for it is not as an improvement on the present state of things but as a settlement of strife that I support the modified Bill; and if he can get the strife ended by an amicable withdrawal of the Bill, no European will object. But I doubt if he is serious in this idea, and I think, when it is known that the proportion of Magistrates' cases tried by District Magistrates in Bengal is ·7 as against 93·3 tried by his subordinates, his fears of inconvenience will abate. I should be very glad if the District Magistrate tried none at all. As the head of the executive—the superintendent of the police—receiver of private reports, &c., he is a very undesirable person to exercise judicial functions, and his executive duties are always heavy. I reiterate my sense of relief at the settlement of the question, though it is clear to my mind that it was a grievous mistake to raise the question by introducing this Bill."

The Hon'ble MR. THOMAS said:—"My Lord, I came into this Council Chamber on Friday last prepared to vote for the Bill going to Committee, because I thought there had been a Concordat, under the shadow of which we might still hope for peace for this troubled land, and I thought we had only to agree together to leave it to the Committee to work out an amicable *modus vivendi*. I thought, too, in doing so, to abstain from any discussion that might tend to prolong the lamentable controversy that has so angrily agitated the country to a state critically bordering on convulsion. But I am distressed to hear how the speech of the hon'ble and learned mover re-opens old sores, re-asserts things that have been answered *ad nauseam*, insists on prominence for the principles that have caused all this grievous agitation, and makes light of those which have instantly brought back peace. There is also a ring of uncertainty and unfinality about the future which fills me with grave misgivings, and about which I would fain be reassured by your Lordship.

The speech of the hon'ble and learned mover is, then, my apology for any discussion at all on an occasion on which I had fondly hoped that we had at last met together to close deep sores, and not *infandum renovare dolorem.*

"We all know, my Lord, that one has only to confidently assert a matter often enough to get the great majority of the world to unconsciously accept it as true, and, the assumption once accepted, then it is easy to build up a splendid edifice upon it, and the majority gaze only at the splendid edifice that catches the eye, and forget the buried false foundation. Thus the hon'ble and learned mover has asserted over and over again, and has built up his present speech on it, as he has built up the whole measure, and has harped and re-harped on it in varied strains till all the Native Press have chimed in, and he and they doubtless believe it to be a great uncontrovertible truth, that the Criminal Procedure Code imposed on the Natives of India restrictions and disqualification based on race-distinctions; and yet, to my simple thinking, it is not the true state of the case for all that; and I find that the Hon'ble Justice Field, in a minute which was in the hon'ble mover's hands before this his last re-assertion of the old error disposes of the matter in words which, with your Lordship's permission, I will read:—

'Now, I venture to take exception to the form of expression here used, as involving a serious fallacy which has since permeated and coloured, not only the utterances of public officers, but also the arguments advanced by the Press and the public. In the first place, the new Code of Criminal Procedure did not *impose* any restrictions. It left the law in this respect in precisely the same condition in which it had been since Englishmen first came to India. Then, when we speak of '*restrictions*' on the power of judicial officers and '*judicial disqualifications based on race-distinctions*,' we use an erroneous form of expression, which has the effect of putting the burden of proof upon the wrong side. It lies upon those who seek to impose *restrictions* or *disqualifications* upon any race or class to prove by the most cogent arguments the necessity for their imposition. Even when the question is whether *restrictions* or *disqualifications* shall be maintained, a very slight *primâ facie* case for their removal may fairly cast on those who advocate their maintenance the burden of showing that the ends of justice or public policy require that they should be maintained. But in the present case the question is one not of *disqualification* but of *qualification*: it is not whether *restrictions* or *disqualifications* shall be removed but whether the personal law of a particular race shall be abrogated—whether a right which has always been enjoyed by a particular class shall be taken away. And it lies upon those who assert the affirmative of this proposition to prove it. It appears to me so necessary that the absolute accuracy of this view should be understood by all parties to the controversy, that, at the risk of being tedious, I shall submit at some length the grounds and authorities upon which it is based.'

"And after referring to those authorities the Hon'ble Mr. Justice Field says again:—

'That Englishmen should be tried by their own countrymen was at the same time part of this personal law and a natural incident of their settlement in, and occupation of, the country. It is not, therefore, an accurate use of language to speak of this right, which is a portion of their personal law, and the natural outcome of the circumstances under which they acquired the country, as a *restriction* or *disqualification* upon members of the other races, whom they have permitted equally with themselves to enjoy their own personal law in all matters in which they valued it, and in which its enjoyment was not opposed to natural justice, or was not inconsistent with the position which the British had necessarily to take up in the country. * * * * * There can be no doubt that, by stating the question for discussion in what I think I have shown to be an erroneous form, and thereby casting the burden of proof upon the wrong side in the controversy, not only have feelings been unnecessarily embittered at the outset, but the right determination of the true question at issue has been rendered more difficult.'

"Again, the hon'ble and learned mover makes a very sweeping and telling proposition which I wish to take the liberty to quote, and make bold to confront with an ugly fact—

'And this test of fitness which it would impose is a test to which no reasonable person could object on the ground of insufficiency. For to say that a Native of India who has been entrusted with the powers exercisable by a District Magistrate or Sessions Judge, who has risen to the position of being the chief executive officer or the chief judicial officer in an area the average population of which in Bengal is about a million and a half,—to say that such a person cannot be trusted to exercise with justice and discretion the very limited jurisdiction which is exercisable over European British subjects outside the Presidency-towns, is to say that no Native of India, however long and complete may have been his training and experience, however high and responsible may be his position in the public service, is fit to exercise that jurisdiction.'

"And now for my fact: one is enough. I do not say *ab uno disce omnes*—far from it. But I do say that one fact is quite enough to show that such very sweeping assertions had better have been left unsaid, and that there is much—very much—to be said on the other side, which for my part I came here on Friday prepared to leave unsaid, in order that we might all unite to endeavour to bring back peace to this land. I could name date and place and individual, but they must be too well known to need that, and it is enough for my purpose that the bare fact should be given. A certain Native who fully answers the test to which we are told 'no reasonable person could object on the ground of insufficiency' had brought before him the case of a man who, wholly unprovoked, ripped open a child, tore out its entrails, devoured them before the

eyes of his still living victim, was apprehended actually red-handed, attempted no denial, and pleaded only the deliberate fulfilment of a vow to a goddess. For this wilful murder this gentleman who satisfies every reasonable test passed a sentence of three months' imprisonment, and the High Court had to annul the sentence and to send an English Judge to try the case *de novo*, and he, of course, condemned the murderer to the extreme penalty of the law. And yet we are told 'no reasonable person' could object to this gentleman's fitness to try him. My Lord, I repeat that I came here on Friday fully resolved to recur to none of these things; but the sweeping assertions of the hon'ble mover have compelled me to do so in defence of the position that the Englishman is not unreasonable in wishing to retain in this foreign land his personal right to be tried by his peers.

"The hon'ble and learned mover will pardon me if I refer once again to his speech, and he will believe me that, in a matter that concerns crucially the well-being of the Empire, I am too deeply moved to think of anything but the Empire. He will pardon me that it chances to be his individual words that in all personal good feeling I still cannot help endeavouring to confute as dangerous. He says our Empire is an Empire of law. He makes light of prestige, and his policy is to level it. What does history, the logic of facts, say to this? Was there ever a nation that maintained its supremacy by the righteousness of its laws? When the Gaul was at her gates, did it avail the Mistress of the World to plead the goodness of her laws before her late subject-races? Her code of jurisprudence was much more in advance of the world and her times than ours is of India, and yet Brennus took no note of it. I will admit that England is the nation in all the world that proudly and justly claims to have most largely supplemented the paucity of her legions by the righteousness of her rule; but I hold that this theory is in great peril of being very much overstrained—that it is dangerous to make light of prestige. Prestige is to power as a reflector is to a light. It economises its force; and, if prestige be thrown away by levelling down, the battalions will have to be doubled to make up for it; for after all they are 'the last logic of nations,' and it is on them only that the law takes its stand. Sir Fitzjames Stephen has some incisive words on this point, and the explanation of the intense feeling that has been exhibited by Europeans lies, I think, not a little in the recognition of the danger of such levelling down policy. It were better, far better, never to have stirred these embers at all, and to have let European and Asiatic walk peacefully side by side in the places they had grown quietly to recognise.

"I cannot but think, too, that a very serious mistake underlies the words in which the hon'ble mover introduces the proposal for trial by jury; and if I am wrong, I should like to be corrected. He says—'It has been strongly pressed upon us' and 'we have agreed to accept the suggestion which has been made to us;' whereas the newspapers stated confidently that the suggestion came from Government and had been accepted by the representatives of the people: and they gave the text of the Concordat, and the Hon'ble Mr. Evans now confirms this impression; and it was because I thought it came from Government that I came here last Friday prepared to support it, as a possible opening for a peaceful solution of the present position. If it comes not from Government, and the Government is not prepared to let the Bill stand or fall on this issue, then it alters the whole aspect of affairs. If the Government will put this principle forward as its own,—this principle of the Englishman retaining his personal right to trial by his peers, whether by jury or as now,—the principle with which I am mainly concerned,—the principle to which the Englishman tenaciously clings and will never yield if he can possibly help it; if the Government will distinctly pledge itself to pass the Bill with this principle maintained or to abandon the Bill, then I for one will give my vote for the Bill going to Committee. But if it will not do so, if I am to understand, as I do from the hon'ble mover's words, that the principle is one outside the Government proposal and accepted only at the suggestion of others, and that, too, on the condition of its being found practically workable; and that, in the event, either in Committee now or in the working experience of after years, of its being found to be accompanied by administrative difficulties, then it will be dropped out and the rest of the Bill passed without it; then, my Lord, the position would be a very different one, and I could not but oppose the Bill.

"There are other things, too, in the hon'ble mover's speech that fill me with grave misgivings. The same mouth that originally introduced this Bill with such a promise of permanency speaks now only of 'meeting the immediate necessities of the case,' and says we are not bound by the pledges given in 1872—the pledges of the principle of trial by his peers on which the Englishman withdrew his objections. Am I to understand that, if, on the Government pledge of reverting to trial by jury, the Englishman withdraws his objections now, and as a compromise accepts all the other parts of the Bill, that pledge is not to be permanent? I hope your Lordship will be able to assure us to the contrary. I hope your Lordship will be able to assure us both that the principle of the Englishman retaining his personal

right to trial by his peers will be an integral part of the Bill, without which it shall not become law, and that it shall be so passed only with the view of its being a permanent settlement. If the Government can give no such assurances, then I submit that it would be well to abandon the Bill, and let us revert to the position in which we all got along very happily until disturbed by these proposals to legislate for a mere theory unaccompanied by any practical want. If the Government can give no such assurances, it will certainly leave the European community in at least a permanent state of feverish unrest, if not in active agitation; for I ought not to conceal from your Lordship that outside these walls there is, as far as can be ascertained in the limited time allowed, much deep-felt anxiety on these points. And as to the Natives, it is already apparent that they do not view the Bill with satisfaction. It has only served to whet their appetites for fresh demands; this much is evident from the speeches of the two hon'ble Native members of this Council who have already spoken, and from the Native Press. If, then, neither Europeans nor Natives are satisfied with the Bill, and it is not only not wanted administratively, but may even create administrative difficulty, what is it that we are to gain by the passing of it? Is it the credit of the Government that is to be saved by persistence in the creation of a political sore that will go on festering in the hearts of both sides to break out at intervals as cases occur? Surely, the credit of the Government will stand a great deal higher if it has the manliness to abandon the Bill. Seeing also the administrative uncertainties which surround the working of the jury-system, in the difficulty of foreseeing through the next few decades the lines of the spread of the European community in India, it would surely be safer and more statesmanlike to abide by the present system, which works well, and has satisfied every one, at least till such time as a change is positively required not by theory, but by the practical pressure of actual circumstances; and such is certainly not the case now. In brief, my Lord, my individual opinion is that I have seen no reason in all the months that have passed to change the views which I submitted to your Lordship's judgment in March last; and everything that has happened from that day to this has, to my thinking, only testified to the correctness of those views; for the deep abiding anxiety of the European and the portentous spread of race-antagonism has fully justified my warning; and I am still unhesitatingly of opinion that the best course for the country would be, as I then said, to withdraw the Bill, or, failing that, to adopt the compromise which I then proposed. Still, looking to the agitated state of the country, I am prepared, if the Government still wishes to persevere with their measure, and can give us the assurances which I ask, to abstain from opposing the action of

Government, in the hope that a *modus vivendi* may yet be worked out by that means. But if the Government can give no such assurances, then I think it wiser to walk in the tried paths to which no practical objection has yet been made than to take all uncalled-for a dangerous plunge into what bids fair to be a sea of troubles in search of what, to my humble thinking, is a mere Utopia. And, even if the Government can give the assurances of principle and permanancy which I ask, still my abstention from opposing the measure will not be because my own judgment approves it, but in deference, for peace sake, to the proposal of the Government accepted by the European portion of the community. I need hardly add, my Lord, that, even so consenting, I must demur to the Committee being directed to report in a week. I see that supporters of the Bill, as well as opponents, deprecate the pressure of such haste, and I see the Hon'ble Mr. Evans asks for the postponement of a report till Friday week."

The Hon'ble SIR A. COLVIN said:—"I do not propose to detain the Council long, or to examine very closely the merits of a controversy which I am glad to think is now drawing to a close. But, before proceeding with what I have to say, I would pause to remark that I entirely disagree with the Hon'ble Mr. Thomas when he says that the speech made by the Hon'ble Mr. Ilbert on Friday last was in any way calculated to re-open that controversy. As I understood the remarks made by Mr. Ilbert and by Mr. Evans, they were both careful, while professing their willingness to meet on common ground on which they agreed to maintain what they considered to be the fundamental principles of public policy which they respectively affirmed. In plainly stating that policy, as they understood it, while they wished to abstain from further controversy, they equally refrained from saying anything which might prejudice their case should unhappily the time arise at which it might become necessary to re-state it. They were careful, in other words, to maintain intact communication with their several bases. The Hon'ble Mr. Thomas has further asked several questions and pressed for a variety of assurances to which I consider it is not my business to reply. Had similar observations fallen from the Hon'ble Mr. Evans I might have had something to say; but the Hon'ble Mr. Evans has maintained a guarded and discreet silence, and I shall follow his example.

"The constitutional and legal aspects of the question before us I leave to others more competent to discuss them, and the whole matter indeed has been so thoroughly thrashed out that I am perfectly aware that I can throw no new light upon it. But what I propose is to explain the reasons why the settlement

which has been come to commends itself to me, and why I accept it as a settlement which I consider should bring about a satisfactory conclusion of the issue which has been raised. The cardinal point to which the Government has throughout these discussions attached importance is the necessity for removing from the Statute-book the absolute disability under which the Natives of India rest, of exercising in any circumstances whatever jurisdiction over European British subjects in criminal cases in the Mufassal. As that point has been practically conceded, I will only say that I entirely agree with those who through good report and evil report have steadfastly adhered to it. The extent to which that disability is to be removed is to me matter of secondary importance. What, in my opinion, is of vital importance is that Natives of India should not, merely because they *are* Natives of India, be absolutely and under every circumstance disabled from exercising that jurisdiction. That a man who has been a Sessions Judge, or who has for years been in administrative charge of a district, and has given ample proof of his integrity, his independence and his ability, be he European or be he Native, is equally qualified to exercise that jurisdiction, and especially in view of the safeguards with which it is by the law even as it stands surrounded, is amongst my most absolute convictions. On this point, as on many others connected with this matter, there have been great misapprehensions. It has been represented, for example, that this jurisdiction was to be conferred on all Native Magistrates; and then it was argued that because all Native Magistrates were unfit to exercise this jurisdiction, therefore every Native Magistrate must be unfit; and that is a fallacy which has attracted much approval. The truth seems to be that the time has gone past when the Government can profitably discuss the question. It was open to the Government of India in times past to say to the Natives, 'We will not admit you to the higher offices; we will accentuate race-distinctions; we will keep you wholly in a subordinate position.' But, happily, the Government of India did not say that. On the contrary, its policy has ever been to give to the Natives of India every encouragement in their efforts to improve themselves, and to assist them in their onward progress. The Government has always given them its warmest support and sympathy, and in the most solemn way has pledged its word, and at its word they have taken it; taken it at its word in a manner which had taken some of us by surprise. So that I look, my Lord, upon this measure as on a bill which has fallen due, and which the Government is bound immediately to honour. Now, I believe, that the main secret of our security in India lies in the conviction among its people that we shall, in all circumstances, and at all costs, maintain inviolable the pledges which we have given them, and that not only in the letter

but in the fullest sense of the spirit of those pledges. Hence, much as I regard and value the desires and wishes of my countrymen, I value more their national honour. I think that there are moments when, misled by prejudice or carried away by passion, they lose sight in public affairs for a moment of those principles which in their private life and in their ordinary transactions form their habitual rule of conduct, and I believe that at such times it is the special duty of the Government, at whatever temporary risk of reproach or unpopularity, to stand between them and the consequences of their misapprehensions, and to hold high the inviolability of its pledges—the ark of its covenant with the people of India. The best answer which could be given to the attacks which assaulted the Government in former days, when civil jurisdiction was given to Natives in India, was the honourable and patient answer which they gave by living down the attacks which were made upon them: and I look to them now again similarly to justify the confidence which the Government for a second time proposes, in pursuit of its engagements, to place in them, and to furnish a similar answer to the charge that the jurisdiction now to be conferred upon them is one which they are incapable of exercising. I myself know a score of men, neither Sessions Judges nor District Magistrates, but men of intelligence, independence, and integrity, plain country gentlemen, who are as competent to exercise this jurisdiction as the hon'ble member in charge of the Bill himself.

"This point settled, then, this cardinal point secured, it is the desire of the Government that material safeguards should be given to European British subjects; and I may say at once on this point that it seems to me very natural and reasonable that, in face of the new departure, European British subjects should wish to assure themselves of these safeguards; that they should come to the Council and say—'We understand that you wish to adopt a policy with which we do not sympathise; we are prepared to admit that you consider it necessary, and we for our part do not propose longer to obstruct it; but from our point of view we ask that you should secure to us our personal safety.' I think that, under the circumstances, that was an argument which might be fairly expected from the lips of our fellow-countrymen in India; and I am of opinion that, so far as safeguards can be given without insuperable administrative inconvenience or prejudice to the ends of justice, it is the duty of the Government to give them. In serious cases I think it natural that European British subjects should wish to safeguard themselves when they rightly or wrongly consider that their personal safety is in question. My hon'ble friend (Mr. Kristodás Pál) cursorily remarked the other day on what he considered might be some of the inconveniences attaching to the Bill. As I assent to the

measure in its proposed form, I am bound to show that justice in my opinion will not be prejudiced if it becomes law. My remarks, like those of my hon'ble colleague, will be summary, but I am unwilling to leave his comments wholly unanswered. The first point raised by Mr. Kristodás Pál was with regard to distance. He argued that because a man formerly had to go possibly 1,000 miles to the High Court, he would be similarly inconvenienced now by having perhaps to go 50 or 60 miles. Well, there is a river in Monmouth and a river in Macedon; and that is about the measure of the similarity. In former days a man had to go far away to the High Court; now he would have to go at furthest to the Sessions Judge's Court, and would suffer no great inconvenience from the distance. That argument I believe was a mere flower of rhetoric, one of those flowers which overlaid the whole of my hon'ble colleague's argument, rather than a serious objection, seriously urged; and I do not think that he would be inclined to press it. Next, he spoke of the consequences which might arise in times of great excitement. But contingencies of that sort were provided for by the provisions of the existing law, which in certain cases such as these give to the High Court power to transfer cases from one to another Court. Then my hon'ble colleague said that to give the Judge the power to sentence, and to a jury the power to convict, was to give to the one the shadow and to the other the substance. But the power of sentencing seems to me a very substantial shadow, a shadow so substantial that it may hang over a man for the term of his natural life, a shadow the substance of which I, for one, am not in the least inclined to test. The hon'ble member then spoke of anomalies. I consider this very dangerous ground to tread, and I decline to follow him on it further than to say that in the honourable path of progress and of endeavour on which the Natives of India have embarked, they will, in my opinion, find more assistance in divesting themselves gradually of anomalies peculiar to themselves than in pausing to contemplate those which are incidental to their relations with their fellow-subjects. Then my hon'ble friend alluded to the miscarriage of justice through the partiality of jurors. Well, that, of all points, seems to me to be one which those who ask for this safeguard must see to. If the juries abuse their powers, so much the worse for the juries; but I understand that there is a body of gentlemen here in Calcutta whose business it will be in future to look uncommonly sharp after us all, and especially after the working of this Bill, and, if I might give them a friendly word of advice, it would be to look especially sharp after the juries.

"My Lord, I need not detain the Council longer; I think I have now said what I had to say; and I will only add, in conclusion, that the Government, in my opinion, have maintained, and have been most careful most effectually

to maintain, the cardinal position which from the first they announced their intention to maintain, and that the safeguards which have been agreed to are quite compatible with that resolution. And, finally, I would express my belief that, if the reasonable remonstrances which your Lordship spoke of on the 9th March last, and which have been now addressed to us by the Hon'ble Mr. Evans, had been addressed to the Government at an earlier stage with the moderation, prudence and sagacity which our hon'ble colleague has evinced, much of the controversy might have been avoided, and the untenable position which the opponents of the Bill had taken up might, at a far earlier moment, have been abandoned."

His Excellency THE COMMANDER-IN-CHIEF said he wished to re-affirm what he had stated in the first instance, namely, that he entirely agreed in the principle of the Bill, and he was glad to find it was to be proceeded with. HIS EXCELLENCY thought from the first, like his hon'ble friend Sir Auckland Colvin, that every safeguard which the Legislature could give ought to be given; and His Excellency the Viceroy was aware that from last August he (THE COMMANDER-IN-CHIEF) was willing and ready to extend the jury-system. In the course of his speech his hon'ble friend Mr. Evans alluded to two points on which HIS EXCELLENCY would like to say a few words. He had expressed his surprise that a dangerous measure like this should pass at all through the Councils of India and the Secretary of State. As regarded the Council of the Government of India, every member of it was present, and could answer for himself; but with regard to the Council of the Secretary of State for India, HIS, EXCELLENCY had something to say. It had been frequently asserted that the members of that Council had disapproved of the measure and had warned the Secretary of State of its dangers, and it had been further asserted that these warnings had been communicated to the Government of India.

The speeches of the late Secretary of State on this question had, no doubt, been widely read. In these speeches Lord Hartington had publicly declared that the members of his Council unanimously approved of the principle of the Bill, and also that they unanimously approved of the despatches which authorized the Government of India to proceed with it, both in its original and its amended form.

It was true that his Lordship in his latest speech on this subject had to some extent qualified his original statement. He had admitted that some of the members of his Council warned him that the question raised in the draft Bill was one which had created much political excitement in former times, and it

was suggested to him that this warning should be unofficially communicated to the Government of India.

This statement explained perhaps the rumours that had reached us regarding the opinions and warnings of the Secretary of State's Council, but they did not justify the assertion that the Council opposed legislation and warned the Secretary of State of its dangers.

However this might be, HIS EXCELLENCY could positively affirm that no caution or warning of any kind, public or private, official or unofficial, ever reached the Government of India from the Secretary of State. That was all he wished to say on the subject.

His Honour THE LIEUTENANT-GOVERNOR said that on the present occasion the remarks which he had to make must necessarily be very few. He wished particularly to express his congratulations to the Government and the gratification which he himself felt at the settlement which had been effected in regard to this Bill, and which was likely to bring to an end a controversy which had disturbed and distracted the province of Bengal to a degree which he had never before experienced in this country. He did not pretend to say that if this Bill stood on its original basis, or if it went forth now to the Select Committee without the proviso and safeguards which the negotiations of these few days had brought about, he should be prepared for a reference of the Bill to a Select Committee. But, when the Government had come forward with a proposal which had very much modified the form in which the Bill was originally framed, and when they had, in addition to that, agreed to the insertion of a proviso which gave satisfaction to the non-official Europeans in the country generally, he did not think any one would be justified—and certainly he should not in his position be justified—in withholding his support to the vote that the Bill should be referred to a Select Committee. Now, there was little doubt in His HONOUR'S mind that, if the Council was discussing for the first time a Bill of these proportions in this novel shape,—and practically they were considering it for the first time,—he had very little doubt that they would not have proceeded with it further without referring it for the opinion of the higher judicial officers of the country and also of the local district officers. But it came before them now under extraordinary circumstances, and therefore had to be dealt with in an extraordinary way. It was a positive novelty in that it introduced for the first time into this country the system of jury-trials in the magisterial Courts—a novelty, he supposed, in any country, and which certainly was more than unusual in India, where the provision of a jury was always a difficult matter, and in many instances almost an impossibility. It revolutionized completely our criminal procedure, by making it the law

that the Magistrate and the Collector of the district, if a European accused was brought before him, should have recourse to a jury to try him. Now, the Bill in its new shape was not before the Council, and they could only judge of it by the general statements which had been made in this Council and out of doors. But he thought they might say this—that, so far as he knew, it would make very little difference in the administration of justice in this province, and from the day of its publication would practically be a dead-letter in Bengal. It was a great thing to his mind that the present law was not changed, and that the Joint Magistrate of the district and other European officers who had criminal jurisdiction over European British subjects could take up cases against Europeans. Now, HIS HONOUR had stated elsewhere—and all experience proved the correctness of that opinion—that the Magistrate and Collector of the district, the gentleman on whom they were now conferring these powers, hardly ever took up cases connected with criminal trials against any one. As the hon'ble member, Mr. Quinton, had said on a previous occasion, the Magistrate and Collector of the district was a kind of superior person; he was the eyes and ears and hands of the Government, and was responsible to the Government for everything which went on in his district; he had to submit reports on railway-accidents, the state of the crops, the condition of education, the management of dispensaries, and, in fact, everything connected with the executive management of the district. The Government looked to him to give any information which was required. He was the officer entrusted with the important charge of the revenue-administration of the district. And with all this the practice had grown up—a practice which had removed the Magistrate and Collector very much from the administration of judicial work—that the whole of the criminal administration of the district fell to the hands of the Joint Magistrate, and the figures which represented this state of things HIS HONOUR was in a position to quote, because they were brought to notice in a paper which had recently been published. It was there seen that, in 1882, of the whole of the criminal cases in Bengal which came under trial, 99·3 per cent. were tried by Joint Magistrates and their subordinate officers, and ·7 per cent. represented the proportion in Bengal, with a population of 69 millions, of cases of a criminal character which came before the Magistrate and Collector of the district. It would be difficult indeed to say what decimal would represent the proportion of criminal cases against European British subjects which would come before Native Magistrates under this Bill. There were 45 or 46 districts in Bengal, and the Government had at the present time possibly to provide districts for two Native gentlemen; and HIS HONOUR could say that it would be almost impossible to realize the chance of any case of a criminal nature in which a European British subject was

concerned coming before one or either of those gentlemen. In the first place, the Government would take care that no Native would be appointed Magistrate and Collector of a district in which there was not a European Joint Magistrate capable of taking up such cases, and in such districts the Magistrate and Collector would never think of calling up such cases for trial before himself. If, through absence, sickness, departure on leave, or other circumstances of that kind, of the Joint Magistrate, it fell frequently to the Magistrate and Collector to take up criminal cases, and it became the fashion to have recourse to juries, there would be serious risk of the whole thing breaking down. But his belief was that the Magistrate and Collector of the district would never have to deal with the cases for which the Bill was intended to provide, and consequently the proposed settlement would under existing arrangements leave things very much as they were at present. The fact was that, in conferring this power on the Magistrate and Collector, the Government was conferring it on the wrong person. It was the man who was coming up in the lower classes of the service, the Joint Magistrate, in regard to whom the difficulty would arise from his position of possibly having to deal with European cases, and they would not, under the Bill as it stood, be able to take judicial cognizance of such cases. It was there where the shoe would pinch; it was not with regard to the Magistrate and Collector that, in his belief, any difficulty would arise.

Another observation which HIS HONOUR wished to make was with reference to a remark which fell from the hon'ble member in charge of the Bill, who said that, in giving these powers to the Magistrates and Collectors of districts, they were giving them to specially selected officers; and if it was conceded that the District Magistrate and Collector was one who had shown, by long administrative ability and capacity, his fitness to take charge of a district with its large responsible functions, then on what ground was it just or reasonable to withhold from him those powers, those smaller powers, which they were now asked to give him? But the fact was that, in Bengal at least, the Government had no manner of power of selection in the appointment of Magistrates and Collectors of districts. A man rose to that appointment, not by ability, but, as soon as a vacancy arose, by seniority. The fact was that a civilian rose to that position after many years of labour and exertion, and he looked to, and felt himself entitled to, and claimed, promotion as of right. HIS HONOUR did not allude to the cases of men who were utterly bad, or utterly incompetent, and who would have no such chance; but, taking the general run of men, it was totally out of the power of the

Lieutenant-Governor of Bengal to refuse to a civilian, when his turn of promotion came, promotion to a district magistracy. He had been thirty years in Bengal, and he knew only of one case in Bengal where such a procedure was ever adopted of refusing a civilian such promotion, and that case was one of an unfortunate officer who himself readily acceded to the justice of the refusal. He was intelligent and active, but came to trouble from a stroke of the sun, and, though he diligently performed his duties to the end of his service,—the sedentary duties which were required of a Joint Magistrate in the trial of cases,—he accepted the position that he was not fit to succeed to the charge of a district. Of course, there were Magistrates *and* Magistrates. There were three grades of Magistrates in Bengal, and the Lieutenant-Governor had the power, which HIS HONOUR had himself exercised, of refusing to allow promotions from one grade to another to an inefficient officer. But, if he held back promotion to an officer when it came to his turn to succeed to a magistracy, not only the officer himself, but the whole service, would resent the act as an unjustifiable exercise of power.

HIS HONOUR had always regretted that the rejection or the adoption of this Bill had been regarded as a political test of a standing or a falling India. He had seen it stated in Native newspapers that the rejection of the Bill implied that the government of 250 millions of people could not be carried on except at the point of the bayonet. As regarded the 250 millions, he would observe that, if we were to substract two hundred and forty-nine millions from the two hundred and fifty, it would leave a large margin to represent those who had ever heard of this Bill, or who ever cared for it, or who, if they did, would not much rather that it should be withdrawn. As regarded the bayonet theory, he did not believe that a shot in anger had ever been fired in Bengal, except perhaps in some local disturbances, since the days of Clive; and the military force that was now maintained in this province for the subjugation of 69 millions constituted in numbers what would make up the population of a fifth rate town or of a large village. Taking the argument in its figurative sense, HIS HONOUR would ask his hon'ble friend Raí Kristodás Pál whether Bengal did not enjoy a greater freedom of action and more liberty of speech and of writing (which, he was afraid, often degenerated into license) than the Natives of Bengal had ever before enjoyed, or could possibly hope to enjoy under any other rulers. Then, with reference to Her Majesty's Gracious Proclamation of 1858, HIS HONOUR would be the last person in the world to depreciate it or ignore it. He agreed with his friend Mr. Ilbert that the ostentatious use of the word *prestige* was

unnecessary and obnoxious. Still the fact of our domination could not be ignored, and, when our rule was loyally acknowledged, it could best be established by the indifferent and impartial administration of justice to all sorts and conditions of men. He was not aware that any one would deny this; and, as regarded the plea now prominently put forward in respect to the Proclamation,—an argument which, if he remembered rightly, was brought forward at the eleventh hour,—he would again appeal to his friend Raí Kristodás Pál, with whom he had been associated more or less for the last thirty years in public business, whether since 1858 the policy of that declaration had not been honestly and honourably carried out in the liberal advancement of the Natives of the country. Their position in every High Court in India, their position as Judges in the Mufassal, their wider employment in every post and department of the public service, proved this; but, where the Proclamation was pleaded as justifying the right of giving to Natives the powers of Justices of the Peace for the sake of trying Europeans, it seemed to HIS HONOUR that this was just one of those cases which the conditional clause of the Proclamation itself excluded as dealing with a question of great delicacy and demanding the most cautious and statesmanlike discretion. For his own part, he did not hesitate to say that, in the condition and circumstances in which Europeans were placed in this country, they had a right to claim the maintenance of a privilege, which they had enjoyed since 1773, either in the form of a trial by jury or, by what was substituted for it in 1872, by a trial before their own countrymen. It was because, without any reference to, or consultation with, them, that this privilege was ordered to be suddenly surrendered, that all the acrimony and animosity of the last six months was due. If the European community had been asked and consulted as regarded this measure even in its original form, or if the Bill in the modified character which the Council had now to consider with the additional safeguards now accepted, had ever been suggested to them, he did not believe that any reasonable European would have hesitated to agree to it.

His Excellency THE PRESIDENT said:—"I am glad that the time has at length arrived when it will be possible for me to express more fully than I have hitherto done the views which I entertain in respect to the measure which we are now considering. I may, I fear, have to make a somewhat large demand upon your patience, but I trust that you will accord to me the indulgence which the importance of the subject demands. On the 7th of December last, at the first meeting of the Council after the Government returned to Calcutta, I explained the modifications which we had submitted to the Secretary of State and which had been approved by him. Upon that occasion I purposely

abstained from anything in the nature of argument, and gave to the Council a bare statement of facts. I must now enlarge and supplement that statement, and explain what course the Government has taken, and the grounds on which they have taken it. In doing so, however, I do not propose to go over again the ground which I traversed in my speech on the 9th of March last year. I then explained how the question, with which we are now dealing, was raised in 1882, and I need not touch again upon that point. We were bound, as we considered, to answer the questions put to us at that time, and we could only do so in accordance with the established policy of the Crown and Parliament, upon which I shall have something to say before I conclude. We might, perhaps while admitting the claim put forward at that time, have tried to postpone the period for its practical acknowledgment; but I explained, in March last, my reasons for thinking that it was wiser to deal with the subject at once, and I have nothing now to add on that point to what I then said. The Bill was therefore introduced, and the first question to which I desire to address myself is the consideration of what was the principle of the measure. That principle is stated in the Statement of Objects and Reasons which was published at the same time as the Bill, and in that statement I find the principle of the Bill declared to be 'to remove from the Code at once and completely every judicial disqualification which is based merely on race-distinctions.' My hon'ble and learned friend, Mr. Evans, has contended, I know, that the fact that under the Act of 1872 a Native Magistrate is precluded from exercising jurisdiction over a European British subject does not constitute a disqualification to hold the office, but it does constitute a disqualification to discharge some of the duties of the office, and to remove that disqualification was the object of the Bill introduced last February. I quite admit that we have not been able, for reasons which I shall give before long, to apply this principle to the full extent which we first intended, and which was covered by the words 'at once and completely.' But to the principle of removing these disqualifications, as far as present circumstances would admit, we have always steadily adhered. Such, then, being the declared principle of the Bill,—to remove judicial disqualifications based merely on race-distinctions,—I now come to review as briefly as I may the circumstances which have taken place since last March. It will be in everybody's recollection that, from the commencement of the controversy which was created by the introduction of this Bill, the opposition has been to the principle of the Bill and the policy upon which it is founded. In many writings, and in not a few speeches, I have observed that some of the most fundamental principles of just and righteous government have been ridiculed and denounced; it would be unjust to hold the opponents of this Bill respon-

sible for the language of some of their number, but, at the same time, the existence of such sentiments and their public avowal is a circumstance which the Government, in considering how to deal with this question, could not overlook. The one demand made upon the Government from February to December was that the Bill should be withdrawn, and the theory put forward was that an Englishman had an inalienable right to be tried on criminal charges by European British Magistrates and Judges. It is now said that that claim meant that he should be tried by a mixed jury, but that view of this matter never was put forward until now, and the claim made was distinctly made in the form and words which I have just read. No doubt, it was sometimes said that the claim to be tried only by a European was a claim to be tried by a man's peers, and anybody who has any acquaintance with the meaning of that expression is, of course, aware that it does not relate in the smallest degree to the race of the Judge before whom the person charged with an offence may be brought. Trial by peers refers to jury-trials, and not to the race of the Judge presiding over the Court before which the accused person is brought up for trial. My hon'ble and learned friend, hoping doubtless to get a rise out of me, alluded jocosely to the fact that I was a peer, and could only be tried, if I chose to claim the right, by the House of Lords. Well, I can only say that, if I were to commit a felony,—and I can assure my hon'ble and learned friend that I have no present intention of doing so,—I should certainly not claim to be tried by that illustrious body. And then my hon'ble and learned friend says, supposing that by the law in England only Judges who were peers could try peers, would such a law be considered to imply any disrespect to other Judges or to cast a slur upon them? I venture to think that it is highly probable that, if Lord Coleridge was the only Judge that could try a peer, his colleagues on the Bench would be likely to think that an invidious distinction; but I will tell my hon'ble friend one thing of which I am perfectly sure, and that is that, if such a system were to be by some extraordinary process set up in England, the people of England would not endure it for a single week.

"That, therefore, was the fundamental principle of the Bill and the policy on which it was founded, and consequently, when the Government came to consider last August, after the various reports of the Local Governments had come in, the course which they should take with regard to the Bill, they held that they were bound to uphold the policy and to maintain the principle thus distinctly impugned. I said, in March last, that to arguments which were inconsistent with the declared policy of the Crown and of Parliament, it would be contrary to my duty to listen. To this declaration the Government, last

August, determined to adhere. We decided, therefore, not to withdraw the Bill, and, having come to this decision, we had then to consider two questions: to what extent the principle of the Bill should be applied, and whether we could offer any additional securities to Europeans against any possible miscarriage of justice. In considering the extent to which the Bill was to be applied, we took note that a considerable misapprehension appeared to exist as to what was the real scope of the original Bill—a misapprehension which seemed to me not to be altogether absent from the mind of my hon'ble and learned friend Mr. Evans to-day. But, in order to show what the scope of the Bill was, I cannot do better than refer to the language which was used in the debate of the 9th March last by my hon'ble friend Sir Steuart Bayley. On that occasion Sir Steuart Bayley used the following words:—

'The aspect in which I have all along regarded the Bill is that its main and important object, its substantive principle in fact, is to allow Native Civilians who may rise to be Sessions Judges or District Magistrates to exercise the powers which the law vests in Sessions Judges and District Magistrates as such, and that they should not be disqualified from exercising those powers on the score of birthplace or nationality. The other or permissive provisions, in regard to Assistant Commissioners and Magistrates of the 1st class, I understand to be an adjunct to the main principle of the Bill, a fringe or margin as it were, and intended only to meet special cases, which the Local Government might otherwise be at a loss to provide for without serious inconvenience.'

"That is not a description of the Bill in its present condition, and after it has been amended and its scope reduced, but it is a description of the Bill given last March when it was before the Council in its original shape. When we came, therefore, to consider the question, we felt that what Sir Steuart Bayley called 'the main and important object and substantive principle of the Bill' stood upon a different footing from that which he described as a 'fringe,' and it certainly seemed to me and others in the light of the controversy which had sprung up, and of the great dislike and fear of the extent of this Bill which were widely entertained, that those who were opposed to it might fairly ask that anything in the nature of a discretionary power vested in the Executive Government should be removed by the Bill. When we became aware of the strength of the feeling this question had originated, it seemed but a reasonable concession to make to those who entertained that feeling that there should be nothing in the measure of a discretionary nature, but that the Act to be passed should distinctly and clearly lay down what was the extent of the jurisdiction to be given. Besides that, as my hon'ble and learned friend Mr. Ilbert said, none of the Local Governments who were opposed to the withdrawal of the Bill, with the exception of the Government of the Panjáb, appeared to desire

to have this discretionary power conferred upon them. Under these circumstances, we determined to withdraw this discretionary power, to give up what Sir Steuart Bayley called the 'fringe.' It is quite true, as I have already intimated, that in so doing we became unable to apply the principle of the Bill to the full extent which we originally contemplated, but we upheld that principle in itself and gave almost as much practical effect to it as would have been given to it in the Bill as originally introduced. We therefore did not hesitate to remove from the measure everything in the nature of an executive discretion. We then came to consider a very important point, and one which we have had always in view, and which has guided us very much in our recent action, namely, whether there were any additional securities beyond those which the present law afforded which could be given to European British subjects against those miscarriages of justice which they appeared to fear; and we were of opinion that there was a suggestion made by that distinguished person, Sir Charles Turner, the Chief Justice of Madras, which would go a very considerable way in that direction, while at the same time it would effect a positive amendment of the law as it stands. In order to make perfectly clear the nature of Sir Charles Turner's proposal, I would ask you—though the extract is a little long—to allow me to read to you what he said in the memorandum which he wrote in reference to the Bill. In the seventeenth paragraph of that memorandum he said:—

'In order to allay whatever apprehension is seriously entertained to the fitness of the officers on whom jurisdiction would be conferred, I have considered whether it might not be desirable to give to every European British subject the same option in respect of the presiding Judge or Magistrate as he at present enjoys to a qualified extent in respect of jurors and assessors. I have come to the conclusion that it would be unbecoming to the dignity of the judicial office that this option should rest with those who are subject to the jurisdiction, and that a safeguard reasonably sufficient might be provided by rendering more effectual a provision of the existing Code. The 526th section, Code of Criminal Procedure, enacts that, whenever it is made to appear that a fair and impartial inquiry cannot be had in any Criminal Court, or that some question of law of unusual difficulty is likely to arise, the High Court may transfer a case to another Court or to itself. I would authorize the High Court to make the transfer if it is made to appear 'that it is expedient for the ends of justice.' And I would supply a defect in the Code by directing that in any case in which prior to the commencement of the hearing the Government, the complainant, or the accused shall notify to the Court its or his intention to make an application under section 526, the Court shall adjourn the hearing for such reasonable time as may be required to enable an application to be made and an order obtained thereon.'

"That was, in Sir Charles Turner's own words, the nature of his proposal, and those were the reasons which he gave in its favour. They appeared

to us to be very good reasons, and the proposal commended itself to our judgment in a high degree, because it would enable a transfer to be made without casting upon the Magistrate, from whom the case was to be transferred, any such reflection as might seem to be involved in the statement necessary under one of the sub-sections of the present Code, that 'a fair and impartial inquiry cannot be had,' when a Court has to say that it might be thought to imply some distrust of the Magistrate trying the case; and, therefore, we considered that upon that ground, among others, it was desirable that the discretion of the High Court in this matter should be increased, that some such words as those suggested by Sir Charles Turner, namely, 'that it is expedient for the ends of justice' should be introduced. Then, it seemed only proper that, when an application of this kind was made, the case before the Court below should be suspended for a reasonable time. Not to do that appeared to make the application almost a farce, and we very readily adopted this amendment as in itself desirable quite apart from anything relating to this particular Bill. The amendment would also be equally applicable to everyone, and not confined to any particular class of Her Majesty's subjects. These were the modifications which recommended themselves to the Council last August, and with these modifications the Bill was, as hon'ble members are already aware, sent home to the Secretary of State and was approved by him. This was the state of things when the Government re-assembled in Calcutta on the 1st of December. Up to that time none of the opponents of the Bill had approached the Government with any proposal whatever for its further modification or for the granting of any additional securities to those who would be affected by it. As I have said, the one simple and unvaried demand had been that the Bill should be withdrawn. But, when we arrived here in Calcutta, my hon'ble and learned friend Mr. Evans, with that public spirit for which he is distinguished, intimated to the Government that he thought that he saw a further alteration of the measure which might be possible, and which might put an end to the controversy which had raged so long. My hon'ble and learned friend no doubt still maintained that the Bill had better be withdrawn, but he made a suggestion which I do not think he will object to my stating to this Council. That proposal was that the sections of the Code which create the legal disqualification of Native Magistrates to try European British subjects should be removed, but that every European British subject brought before a Native Magistrate should be given the right to claim a transfer to a European Magistrate. I think that is a correct statement of the proposal of my hon'ble and learned friend Any proposal coming from Mr. Evans naturally demanded the utmost consideration from Government. It was the first proposal of the kind which had

reached our ears, and we consequently gave to it a most full and careful deliberation. It seemed, however, to us that it was a proposal which we could not accept, because it appeared to take away with one hand what it gave with the other. It gave the appearance of removing the legal disqualification, but it accompanied it with a right on the part of the accused person to set up that disqualification again by claiming to be tried by a Judge of his own race, and it also seemed to us to be objectionable because it admitted distinctly the principle that a European British subject had a right to refuse to be tried by a Native Magistrate or Judge; and, lastly, we thought with Sir Charles Turner, as stated by him in the passage which I have read, that such an option on the part of the accused would be unbecoming to the dignity of the judicial office; and under these circumstances we felt ourselves obliged—I can truly say with great regret—to refuse to accept the proposal which my hon'ble and learned friend Mr. Evans with the most friendly intention to both sides had offered to our consideration.

"But the fact that an important Member of this Council and a decided and undoubted opponent of this Bill had proposed an arrangement to the Government which he thought might lead to a settlement of the difficulties which had arisen, raised at once for our consideration the question whether there was anything in the way of additional security which we could give to those who would be affected by this Bill without any sacrifice of principle, with a view to allay the fears which we knew to be largely entertained, and thus to enable the Bill to be passed with such a degree of general acquiescence as would prevent its being made even after it became law the battle-field of contending parties. It was our duty to take into serious consideration the chances of such a settlement which the opening made by Mr. Evans' proposal gave us, and we entered upon the examination of that subject with a very earnest desire to satisfy all that was just and reasonable in the wishes of those who objected to the measure, and to find, if possible, a mode by which we might, consistently with the principles we determined to uphold, arrive at a pacific solution of the question. The only proposal which seemed in any way to fulfil the conditions which I have described of being not contrary to the principle of the Bill, and yet one which might be accepted by those who were opposed to us, as giving them legitimate security, was one which had been made in the month of May by the Government of Bombay, and under which a right to claim a jury would be given to Europeans in serious cases, summary jurisdiction over Europeans being left as it is at present. The proposal was made by the Government of Bombay in their

report upon the present Bill, and had been considered by the Government of India in August last, and I do not wish to deny that it had for me at that time an undoubted attraction, perhaps natural enough, because, having lived all my life in England, I have an Englishman's feeling on the subject of a jury. It did not, however, at that time commend itself to the approval of the majority of my colleagues, and we had nothing before us whatever to lead us to suppose that if such a proposal had then been made by us it would have been accepted as a satisfactory settlement of the question by the opponents of the Bill, they having up to that time declined to accept any arrangement, except a complete withdrawal of the measure, and never having in any form or through any person approached us with anything in the nature of a proposal for a compromise or for a modification of the Bill. Under these circumstances, a suggestion of this kind was made by my hon'ble colleague Sir Auckland Colvin to my hon'ble and learned friend Mr. Evans, and the upshot of what passed between them is stated in the words which I shall here read to the Council. The Government undertook—

'to agree in Select Committee on the basis of the modifications approved in the Secretary of State's despatch to the right being given to European British subjects, when brought for trial before a District Magistrate or Sessions Judge, to claim trial by jury such as is provided for by section 451 of the Criminal Procedure Code, subject to the following conditions:—

'(1) No distinction to be made between European and Native District Magistrates and Sessions Judges.

'(2) Powers of District Magistrates under section 446 of the Code to be extended to imprisonment for six months or fine of two thousand rupees.'

"There was in this undertaking no sacrifice whatever of the principle of the Bill. It distinctly lays down as a condition of the acceptance by the Government of such a proposal in Select Committee, and the extended right to a jury-trial that no distinction should be made between European and Native District Magistrates and Sessions Judges. Both under the arrangement will be placed in all respects on the same footing. All judicial disqualifications of Native Magistrates and Judges of those grades will be removed. Europeans will be liable to appear equally in their Courts, and will be dealt with by them precisely in the same manner. The principle of the Bill will thus be entirely maintained. This arrangement also gives no sanction to the theory to which I have already referred, that an Englishman possesses everywhere an inalienable right to be tried only before a Magistrate of his own race, a right which, as my hon'ble friend Mr. Ilbert explained in his speech, is not recognised in other domi-

nions of the British Crown,—in Ceylon or in China for instance,—and which no Government since the passing of the Act of 1833, which distinctly contravenes any such claim, has ever been known to admit. But it was an arrangement which, as it seems to me, ought to be satisfactory to Englishmen in India, for it gives them in all serious cases a judicial security to which they are accustomed at home, which is peculiarly English in its character, and upon which they have been brought up to set a very high value. Mr. Kristodás Pál, however, urged on Friday last certain objections against this arrangement. He spoke of it, in the first place, as involving a reduction of the power of Magistrates, and seemed to think that some slur was cast upon a Magistrate if he was required to try a case with the assistance of a jury. I cannot with my English experience for a moment admit that such is the case. It is notorious that, both in England and in India, it is the higher Magistrates who try cases with a jury. Criminal trials before the High Courts of India are by jury. The higher Magistrates in England try by jury, and in the case of Justices of the Peace at home, when they sit in the higher capacity of Justices in Quarter Sessions, they try by juries, it being in their lower capacity in Petty Sessions that they try cases without them. To be required to try with a jury does not imply any diminution of the status of the Judge or Magistrate; indeed, it rather implies the contrary; and, as a matter of fact, Mr. Kristodás Pál should remember that, under the arrangement proposed in this agreement, the powers of District Magistrates over European British subjects will be materially increased and not diminished. Again, Mr. Kristodás Pál spoke of the possibility of a failure of justice resulting from this system. Such a failure of justice would, undoubtedly, be an intolerable evil; but I need scarcely say that, if I anticipated that this arrangement would result in any such failure of justice, I should never have been a party to it. I do not think that such fears are well-founded. Of course, if hereafter it should turn out that serious failures of justice or other grave evils arise out of the system about to be established, it will be the duty of the Government of the day to apply adequate remedies to those evils when they appear; but, as I have said, I do not anticipate that those evils will be created, and I have the utmost confidence that Local Governments and their officers will do all in their power when this Bill becomes law to secure the honest and effectual working of this extension of jury-trials. This is the desire which I and my colleagues entertain, and I am sure that this course will be taken by all Local Governments throughout the country.

"Then Mr. Kristodás Pál said that numerous transfers to distant places will be necessary under this arrangement. My hon'ble and learned friend Mr. Evans, I think, made some remarks upon that point to-day. It does not seem

to me probable that that will be the case. There is no intention of altering the present arrangement for the trial of petty cases by Magistrates below the rank of District Magistrates, or of adopting the suggestion of Mr. Gibbon, the other day, that a general right should be given to Europeans of trial by jury in all cases. Summary jurisdiction will remain as it is at present, and care will be taken not to render the jury-system ridiculous by applying it to every petty case. In all cases tried before a District Magistrate the right to claim a jury will be given, but it must be borne in mind, in reference to this question of frequent transfer, that those will almost invariably hereafter be cases for which the proper punishment is from 3 to 6 months, and which under the present law would have to be sent to the Sessions Judge, and, therefore, though it should be found occasionally necessary to transfer those cases to some more distant officer, nothing more will occur than would occur now, when District Magistrates are debarred from dealing with such cases at all, and are obliged under any circumstances to transfer them to the Sessions Court. These are subjects, however, which I have no doubt will engage the attention of Local Governments, and it will be their duty to do everything in their power to prevent anything in the nature of inconvenience to suitors.

"But there are aspects of this case looked at from the point of view of the Native community upon which Mr. Kristodás Pál scarcely touched, and on which I desire to make a few observations; and at the outset I must say that, if the proposed amendment had given to one class of Her Majesty's subjects a privilege from which the rest of those subjects were wholly debarred, and to which the law afforded them no means of ever attaining, the objections to it would have been very serious, but, as hon'ble members are aware, that is not the case. It must be remembered, in the first place, that the amendment, while it takes nothing away from the Natives, gives to the Europeans in jury-districts little or nothing which they do not now possess. As summary cases will in practice be disposed of by Justices of the Peace below the rank of District Magistrates, and as the cases which will be dealt with by District Magistrates will generally be those which will fall within the category of the more extended powers with which they are to be invested,—cases which at the present time go to the Sessions Judge,—the Europeans will in the great majority of cases in jury-districts obtain no novel right to a jury-trial at all. Practically, therefore, in these districts this arrangement will leave things very much as they are so far as regards the question of right to trial by jury; though the arrangements under which that trial will be conducted may be of a somewhat different character from the present arrangements. In non-jury districts, the amendment will no doubt at present introduce a distinction, but the distinction is one which,

as we all know, can be removed without fresh legislation in any district and at any time if the Local Government should think it fit to do so by extending the general jury-system. My hon'ble friend Mr. Amír Alí touched upon this subject, but I did not understand him to say that he proposed to move any amendment regarding it in the Select Committee on the Bill, and I should deprecate his doing so. As I have alluded to remarks which fell from Mr. Amír Alí, I may say, with respect to certain amendments which he announced his intention of submitting to the Select Committee, that I am sure the Select Committee will receive with careful attention anything which he may bring under their notice, but I cannot, of course, express any opinion on the part of Government in regard to proposals which are not at present before us. I was glad, however, to observe that he said that what he had to propose would not affect the European British subject, because of course it must be clearly understood, with respect to that branch of the question, that the Government are altogether bound by the agreement which has been made through the instrumentality of Mr Evans, and by that agreement they intend to abide. But Mr. Amír Alí alluded specially to certain amendments which he intended to suggest in section 526 of the present Code. That is the section affected by Sir Charles Turner's proposals, and I am quite sure that the Select Committee will be very glad indeed to have the assistance of my hon'ble and learned friend in amending that section with the object of extending the powers of the High Court in regard to transfer. I am afraid that, in touching upon the points specially alluded to by Mr. Amír Alí, I have somewhat wandered from the question with which I was dealing when I first referred to this matter, and I will now go back to it.

"Native opinion is, I know, averse to such distinctions as those which will be made in non-jury districts. The feeling is very natural, but I would ask those who entertain it to remember that the measure which we are now, I trust, about to pass will vindicate a principle of the greatest value to Her Majesty's Native subjects, will remove a disqualification very distasteful to some of the highest Native Magistrates and Judges of the land, and will constitute a substantial, if but a limited, advance in the application of the just and wise policy inaugurated in 1833 and confirmed in 1858. If, to obtain these results in a manner calculated to give them the solid security afforded by the acceptance of the general body of the European community, the Government has consented to grant to those who are directly affected by the change of the law now about to be made a safeguard specially suited to their feelings and consonant with their traditions, it has surely acted wisely in the interests of all parties concerned. One side has gained a reaffirmation and extension of a great principle, which has been violently assailed and bitterly opposed, and the other has received a concession calculated to allay

all that is reasonable in fears which have no doubt been widely felt. It seems to me that we may find in these considerations the true justification of the course which the Government has taken.

"Before I pass to another topic of great importance, I would just say one word in respect to some observations which fell from my hon'ble friend the Lieutenant-Governor. He spoke of the principles on which men were promoted to the highest posts in the Civil Service; and he said that those promotions were practically made by seniority. Well, I should be the last man to deny the claims of seniority; they are great, and constitute a very important element in the consideration of questions of promotion, but at the same time they ought not to constitute the sole, or even the ruling, principle in respect to such promotions. In the despatch from the Court of Directors, to which reference was made on Friday by my hon'ble friend Mr. Ilbert, it is laid down distinctly that fitness is henceforth to be the criterion of eligibility. I think that that is a sound principle, though I admit that great weight ought to be given to the claims of seniority, and I can assure my hon'ble friend the Lieutenant-Governor and others that, so long as I hold office, they will always have my warm support in any case in which they think it necessary to disregard the claims of seniority in favour of considerations of fitness.

"And now, before I conclude the observations I have to make upon this occasion, I wish to explain to this Council the view which I entertain of the policy by which the Government has been guided in the introduction and conduct of this measure; and, in the first place, I desire to point out to hon'ble members that this policy is not, as it is often represented to be, something entirely novel, which has been invented by myself or sent out brand new from England. It is, on the contrary, a policy which was introduced half a century ago, when Europeans were first admitted without restriction to this country. It was a great conception of a great Government, of which, be it remembered, men such as Lord Grey, Lord Palmerston, Lord Russell, Lord Lansdowne, and the late Lord Derby were members. It was clearly enunciated in Parliament and confirmed by both Houses; it was explained and commented on in the despatch from the Court of Directors to which my hon'ble friend Mr. Ilbert alluded on Friday; and, finally, it received a solemn confirmation in the Queen's Proclamation of 1858. In the Act of 1833 and in that Proclamation we have then, as it seems to me, two great instruments embodying a clear and definite policy, from which, as I hold, it is not open to any Government of India

to depart. The Charter Act of 1833 was so called, because it prolonged for a limited period the charter of the East India Company, but it seems to me that it deserved the name much more because it conferred a Great Charter upon the people of India. The Proclamation of the Queen, issued at a moment so important and so critical as the assumption by the Crown of England of the direct government of the British dominions in India, explained the principles upon which that government was to be conducted, and gave pledges to Her Majesty's Indian subjects which it has ever since been the duty of Her Majesty's representatives to redeem. Those who know anything of the intention with which that Proclamation was prepared know very well that its authors regarded it as having in view the objects which I have described, and to look at it in any other light would be altogether inconsistent with the great and noble purposes with which it was issued. I know that the view which I hold upon the subject of the character of this document has recently been repudiated by a learned Judge in England, Sir Fitzjames Stephen, who has spoken of it in these words :—

'The Proclamation has no legal force whatever. The Act of Parliament has no force beyond the legal effect of its words. Neither can bind the Indian Legislative Council, which ought to be guided in the exercise of its discretion solely by its own opinion of the merits of the measure submitted to it, and the extent of its legal authority.'

"And then mark this language—

'As a ceremonial, the Proclamation may have been proper, but in any other point of view it is a mere expression of sentiment and opinion, worth as much as the sentiments and opinions expressed would have been without it, and no more.'

"We did not require one of Her Majesty's Judges to tell us in these days that a Royal Proclamation has not the force of law; but when Sir Fitzjames Stephen goes on to maintain that a Proclamation issued by the Sovereign of England and of India is only a ceremonial, and is worth no more than the sentiments which it expresses are worth by themselves,—that is, that it was a mere formal utterance of sentimental phrases of no binding force or practical effect whatever,—I cannot too emphatically express my dissent.

"To me it seems a very serious thing to put forth to the people of India a doctrine which renders worthless the solemn words of their Sovereign, and which converts her gracious promises, which her Indian subjects have cherished for a quarter of a century, into a hollow mockery, as meaningless as the compliments which form the invariable opening of an Oriental letter. Sir Fitzjames Stephen, it seems to me, is not consistent, for he admits, in the course of the

document from which I have quoted, that the Proclamation binds the Government of India in regard to the Native Princes and States, but, in regard to Her Majesty's own immediate subjects, it is, according to his view, of no force whatever. It gives no pledge, and it lays down no principle. But, if it binds the Government towards the Princes of India, it binds it to the people of India as well. The document is not a treaty—it is not a diplomatic instrument; it is a declaration of principles of Government which, if it is obligatory at all is obligatory in respect to all to whom it is addressed. The doctrine, therefore, to which Sir Fitzjames Stephen has given the sanction of his authority I feel bound to repudiate to the utmost of my power. It seems to me to be inconsistent with the character of my Sovereign and with the honour of my country, and, if it were once to be received and acted upon by the Government of England, it would do more than any thing else could possibly do to strike at the root of our power and to destroy our just influence, because that power and that influence rest upon the conviction of our good faith more than upon any other foundation, aye, more than upon the valour of our soldiers and the reputation of our arms. I have heard to-day with no little surprise a very different argument. The Hon'ble Mr. Thomas, in a speech in which he did his utmost to stir up the bitterness of a controversy which was approaching a settlement and to fan again the dying embers of race-animosity, has asked—Was there ever a nation which retained her supremacy by the righteousness of her laws? I have read in a book, the authority of which the Hon'ble Mr. Thomas will admit, that 'righteousness exalteth a nation,' and my study of history has led me to the conclusion that it is not by the force of her armies or by the might of her soldiery that a great empire is permanently maintained, but that it is by the righteousness of her laws, and by her respect for the principles of justice. To believe otherwise appears to me to assume that there is not a God in Heaven who rules over the affairs of men, and who can punish injustice and iniquity in nations as surely as in the individuals of whom they are composed. It is against doctrines like this that I desire to protest, and it is against principles of this description that the gracious Proclamation of the Queen was directed. So long, then, as I hold the office which I now fill, I shall conduct the administration of this country in strict accordance with the policy which has been enjoined upon me by my Queen and by Parliament. Guided by this policy, it has been the duty of the Government to refuse with firmness what could not be given without an abandonment of principle. But we have not allowed anything which has passed in the heat of this prolonged controversy to deter us from seeking up to the last moment for a solution of the question at issue which could be honourably accepted by ourselves and by

our opponents alike. In doing so, we have, I believe, better consulted for the real advantage of all races and classes in the country than if we had rested the reform we are now about to make upon the insecure foundation of a mere exercise of power." And it is in this belief that I now ask you to remit this Bill to a Select Committee, who will consider the amendments which may be proposed, and mould them into the shape best suited to carry out the objects which it is desired to attain. I have one word more to say. I quite accept the proposal of my hon'ble friend Mr. Evans that the Select Committee should report on Friday, the 18th of this month."

The Motion referring the Bill to a Select Committee was then put and agreed to.

The Council adjourned to Friday, the 11th January, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 18th January, 1884.

Government of India Central Printing Office.—No. 503 L. D.—18-1-84.—300

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 18th January, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.I.E.

MADRAS PARTITION DEEDS BILL.

The Hon'ble MR. ILBERT moved that the Bill to give effect to certain unregistered instruments of partition relating to immoveable property in the Madras Presidency, and to remove doubts as to the titles conferred thereby, be taken into consideration. He said:—"This is a measure to remove doubts as to the legal effect of certain partition-deeds which have been executed in the Madras Presidency. It would have to be worked by the High Court of Madras, and the Bill which is now before the Council was framed in exact accordance with the draft which was submitted by the Judges of that Court. The Judges have considered the Bill, and have suggested one or two minor amendments, which appear to us to be reasonable and desirable to adopt. These are the amendments which appear on the notice-paper to-day."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that, in section 1, clause (*b*), after the word "transferee" the words "for value" be inserted.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that, in section 2, line 9, for the words "joined in the transfer" the words "directly or indirectly caused such privation of right" be substituted; in line 10, for the word "the" the word "his" be substituted; and in lines 10 and 11, the words "if any, in the hands of the heirs of the sharer" be omitted.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill as amended be passed.

The Motion was put and agreed to.

NORTHERN INDIA TAḲḲÁVÍ BILL.

The Hon'ble SIR STEUART BAYLEY introduced the Bill to amend and provide for the extension of the Northern India Taḳḳávi Act, 1879, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Ilbert and Quinton and the Mover. He said:—"I said all I had to say on the subject in asking leave to introduce the Bill, and I need not take up the time of the Council again."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

VALIDATION OF TITLES (PANJÁB) BILL.

The Hon'ble MR. ILBERT introduced the Bill for the validation of decisions passed on appeal by certain Settlement-officers in the Panjáb, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Gibbs, the Hon'ble Sir S. Bayley and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Panjáb Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects.

SUNDRY BILLS.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Miller be added to the Select Committees on the following Bills:—

To amend the law relating to the survey, and the examination and grant of certificates to Engineers of Inland Steam-vessels, and to provide for certain other matters relating to those vessels.

To amend the law relating to the survey of Steam-ships and the grant of certificates to Engineers of those ships.

The Motion was put and agreed to.

EXPLOSIVES BILL.

The Hon'ble MR. ILBERT also moved that the Hon'ble Raí Kristodás Pál be added to the Select Committee on the Bill to regulate the manufacture, keeping, sale, conveyance and importation of explosives.

The Motion was put and agreed to.

The Council adjourned to Friday, the 25th January, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 18th January, 1884.

Government of India Central Printing Office.—No. 554 L. D.—22-1-84-3(8

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 25th January, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K C.M.G.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Darbhangá.
The Hon'ble J. W. Quinton.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble H. J. Reynolds.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, be taken into consideration. He said :—

"My Lord, this Bill has been amended by the Select Committee on the lines indicated in the last debate in Council. The effect of the amended Bill, so far as it relates exclusively to European British subjects, is explained in the Report of the Committee, and is as follows :—

"(*a*) the power of appointing Justices of the Peace will remain on its present footing;

"(*b*) all District Magistrates and Sessions Judges will be *ex officio* Justices of the Peace, and will have power to try European British subjects;

"(*c*) District Magistrates will be empowered to pass upon a European British subject a sentence extending to six months' imprisonment or two thousand rupees fine, or both, that is to say, a sentence twice as severe as they are empowered to pass at present, but any European British subject charged before a District Magistrate will have a right to require that he shall be tried by a jury of which not less than half the number shall be Europeans or Americans, or both; and

"(*d*) a European British subject committed for trial before a Court of Session will have a similar right even in those districts where trials before the Court of Session are not ordinarily by jury.

"When a jury is claimed before a District Magistrate, and the Magistrate has reason to believe that a jury composed in the manner required by the law cannot conveniently be constituted to try the case before himself, he may transfer it to another District Magistrate or Sessions Judge. The question as to the particular Court to which the case should be transferred is one which must obviously be determined with reference to administrative considerations, and to the varying circumstances of different districts. Accordingly, it is left to general rules, which are to be framed by the High Court with the approval of the Local Government. But there is power for the High Court to make special orders in exceptional cases. The Court to which a case is thus transferred is to try it with all convenient speed, and with the same powers and according to the same procedure as the Magistrate from whose Court it is transferred.

"The provisions which I have described relate exclusively to European British subjects, but the amended Bill contains a few other provisions which are of general application. Amongst them are two amendments which we have adopted on the suggestion of Sir Charles Turner, the Chief Justice of Madras. In accordance with his suggestion, we have amended section 526 of this Code by enabling the High Court to make an order of transfer under that section whenever it appears to the Court that such an order is expedient for the ends of justice. The object of the amendment is to make the section somewhat more elastic than it is in its present form. In connexion with the same section I may mention a minor amendment which we have made for the purpose of removing what appears to be an ambiguity in the present wording, by making it clear that the power to order a transfer includes the power to order a com-

mittal. We have also adopted the second of Sir Charles Turner's suggestions by requiring the Court below, in cases where it is notified of an intention to apply for a transfer under section 526, to exercise the power of adjournment under section 344. It has been objected to this amendment that it may in some cases enable an accused person to obtain an adjournment on insufficient grounds, and merely for purposes of delay, or for some other improper reason. The objection is not without its weight, but it must be remembered that almost every safeguard which is given to an accused person is liable to a similar objection, and we have endeavoured to frame the section in such a way as to minimize the risk of its being abused. The application for adjournment must be made before the commencement of the hearing. The adjournment need not be granted until the evidence for the prosecution has been taken, and the Courts in granting the adjournment may, under section 344, impose such terms as it thinks fit as a condition of the boon.

"My hon'ble friend Mr. Amír Alí brought forward in Committee certain other amendments, the general object of which was, as he explained to the Committee, to reduce the complication and dangers which may arise under the existing law from Magistrates having to try cases in which they collected evidence for the prosecution, and in a certain sense acted as prosecutors. We fully admit that the combination in the same person of executive and judicial functions is open to serious objection on principle, and we are most anxious to do all that with the limited staff at our disposal we can do to remove or reduce the risk of failure of justice arising from this cause. But at the same time we felt that it would be impossible for us, without further enquiry and consultation with Local Governments and their officers, to insert in the present Bill at this stage any amendment of the Code which would have a wide scope, or might possibly alter to a serious extent the present mode of administering justice in the country. It was for these reasons—reasons the weight of what I am sure that my hon'ble friend fully appreciates—that we were unable to adopt any more than a very small part of the amendments which he has moved. The amendments which were adopted are two. The first enables an accused person, when brought for trial before a Magistrate who has taken cognizance of his case, not on a formal complaint or on a police-report, but on a report from some other person, or on the knowledge or suspicion of the Magistrate himself, to require that his case be transferred to another Court. The second requires a Magistrate, when exercising the power given to him under section 528 of transferring a case from one file to another, to record his reasons in writing. The power is one which is obviously necessary, and the exercise of which forms part of

the ordinary administration of justice in the country. But it is given in very general terms, and although it is at present liable to be controlled under the revisional powers given by the existing Code, yet the obligation to record reasons may constitute a further salutary check on any abuse of the power.

"These are the only amendments which the Committee have felt themselves in a position to recommend. I observe that my hon'ble friend the Mahárájá of Darbhangá has given notice of an amendment to the effect that all persons, Native as well as others, should have the right to claim trial by jury. I presume that he has given his notice merely for the purpose of placing on record his opinion as to the mode in which the law ought to be altered, and that he has no intention of seriously pressing his amendment on the Council. If he were to do so, the Government would, of course, be compelled to vote against it under present circumstances, for the same reasons as those which prevented the Select Committee from accepting Mr. Amír Alí's amendment. But I hope he will not do so, for an adverse vote, though given on special grounds, may be misconstrued, and the question is one on which I, for one, should wish to reserve my judgment in the amplest manner."

The Hon'ble MR. EVANS said:—"It is desirable that I should explain how there come to be matters in the Bill as amended which are beyond its original scope. The question on which the Government and the European British subjects were at issue was this. It was proposed to give jurisdiction to officers, not being European British subjects, over European British subjects, contrary to the arrangement of 1872. It is necessary to bear in mind that the European opposition was directed against the admission of officers not European British subjects, and that amendments meeting the case of these few Native officers would have been sufficient. That would have been a small measure. It was the Government that insisted that the European British subject should also have restored to him the right of trial by jury before European District Magistrates and before European Sessions Judges in non-jury districts. If this enlargement of the rights of the European British subject should create any administrative inconvenience, it is the Government, not the European British subject, which is responsible. With regard to section 526A, known as the Turner clause, it was among the modifications approved of by the Secretary of State; I had always thought it of very little use and very unworkable. I suggested that it should be given up in Select Committee. But it was the Government that insisted upon its being retained. If this clause turns out a statutory engine of delay in favour of the long purse, whether European or

Native, the responsibility will rest with Government, and not with the European British subject. As regards the other amendments, they were proposed by my hon'ble friend Mr. Amír Alí and accepted by Government. They have nothing to do with European British subjects more than with Natives. They are small attempts to deal with great evils in the Code, which can never be got rid of unless the executive and judicial functions are completely separated—a step which will involve a very serious change in the administration of the country. Whether these small amendments will in practice do more harm or more good, it is for the local officers to say. The responsibility for these clauses also rests with the Government. In the opinion given by that very experienced District Officer, Mr. Edgar, he shows that the good working of the great changes made in 1872 was due to their being made by consent. Sir Fitzjames Stephen and his colleagues were wise in making them by consent, and were justified by the result. I hope that this consent settlement may be equally successful. Its merit is that, however great its imperfections may be, it restores peace. I hope no one will rake up the ashes of this dead fire, and that cordiality will be restored between the Government and the Europeans and between the Europeans and the Natives. Unless these great elements work cordially together for the welfare of the country, its future prosperity will undoubtedly suffer."

The Motion was put and agreed to.

The Hon'ble THE MAHÁRÁJÁ OF DARBHANGÁ said:—"I do not know whether I am quite in order in moving this amendment. I would have much sooner preferred that the Motion should have come from some one of the members who were in charge of the Bill in Select Committee. Objection might certainly have been taken to my amendment if the Bill had now stood in its original shape. This Bill was originally supposed to be a Bill to amend the Criminal Procedure Code as regards the exercise of jurisdiction over European British subjects. This, in fact, was the name of the Bill when it went to Select Committee. But now I see that it comes out simply as a Bill to amend the Criminal Procedure Code: no special mention is made of European British subjects. I therefore am led to believe that hon'ble members have now a right to discuss any section of the Criminal Procedure Act that they may wish. The Bill, as originally named, intended to do away with race-distinctions altogether. The original Bill has been, therefore, in a way withdrawn altogether. It has been certainly very much modified in Select Committee, and it can be now supposed to be a Bill to give to every European the right of trial by jury in almost every case. My object is certainly not to question the decision of the Select

Committee in that respect. I simply wish that this right should be extended to Indian British subjects as well, but with certain restrictions. My amendment does not mean that Natives of India should have in every case the privilege of trial by jury. I simply wish that in all sessions cases the Natives of India should have this privilege; and I do not at present mean to move that they should have the right of demanding trial by jury in cases before the District or any other Magistrates. I am perfectly well aware that it would be necessary to get the opinions of the Local Governments on a general question of this sort. In many places it might be perfectly impossible to get enough proper men to form juries. In other places, on the other hand, it might lead to an increase of expenditure. I simply wish that in every sessions case the accused should have the option of being tried by jury. I do not go so far as to ask the Government to put the European and the Indian subjects on terms of entire equality, as I think a proposal of this sort would not only be unreasonable, but is never likely to be listened to. If the Indians are a conquered race and the Europeans are conquerors, it is preposterous to think that the conquered race and the conquerors can ever legally be put on terms of equality. I do not wish to rob the Europeans of any of their privileges. I have now to move that, after section 2 of the Bill, the following section be inserted:—

"3. To section 269, the following proviso shall be added, namely:—

'Provided that in trials before a Court of Session, if before the first assessor is appointed, the accused requires to be tried by a jury, the trial shall always be by a jury.'"

The Hon'ble MR. HUNTER said:—"My Lord, I entirely sympathise with my hon'ble friend, the Mahárájá of Darbhangá, in his desire to see the system of trial by jury extended to the Natives of this country. But I think that the present debate does not afford a suitable occasion for asking the Council to consider so large a proposal. I for one could not give a decision on such a scheme without learning the opinions of the Local Governments; and I think that this view will be shared by those members of the Council who are most anxious to effect the removal of distinctions of race in matters of judicial procedure. The question of the extension of trial by jury has been deliberately placed by the legislature in the hands of the Local Governments. It would be impossible for the Council to re-open this difficult question without referring to those Governments. I shall be glad to see the question thus referred, and I hope that the reference will result in an extended application of the jury-system. But I should strongly object to delay the passing of this Bill until the

reference was made. To accept the Maháráját of Darbhangá's amendment would involve such a delay, and would prolong the political agitation which the passing of this Bill is intended to close. If the Maháráját insists on pressing his amendment, I must therefore oppose it. But in the interests of the Native community, I would ask my hon'ble friend not to press his amendment. I think the wisest course for him, and for those of us who sympathise with his views in this matter, is to trust to the well-known desire of your Lordship to extend as soon as possible, and as widely as practicable, the system of trial by jury to all classes of Her Majesty's subjects in India."

The Hon'ble Mr. AMÍR ALÍ said:—"My Lord, though I am inclined to think there are considerable difficulties in the practical working of the present proposal,—difficulties which induced me, I must confess, to refrain from bringing the matter forward in Committee,—I believe the hon'ble the Maháráját of Darbhangá's amendment is perfectly correct in theory; and, therefore, if he presses it, I shall support the amendment. There are many assessor-districts at the present moment quite as advanced and fitted to receive the jury-system as the so-called jury-districts. In their cases, there would be no difficulty whatever. It is only where the people are not sufficiently advanced to understand the nature of a jury-trial, or to appreciate the duties devolving upon jurors, that there may arise some difficulty. But I should think that in such instances the difficulties can be minimised by administrative arrangements. Personally, I am not an ardent advocate of the extension of the jury-system to those parts of the country which are not prepared for it. In those places, a trial by jury is not always to the advantage of the accused; for, while in trial with assessors the accused has a right of appeal to the High Court on law as well as facts, in the case of a conviction by a jury there is no appeal, except on points of law. Considering the difficulties which surround the question, perhaps the Hon'ble Maháráját may be inclined not to press the amendment."

The Hon'ble RAÍ KRISTODÁS PÁL said:—"Bearing in mind what fell from your Lordship the other day, deprecating the raising of the general question of extension of jury-trial for Natives, I thought it proper not to bring forward any amendment or motion on the subject. I would have remained silent if my hon'ble friend the Maháráját of Darbhangá had not brought forward his motion. The subject, however, being mooted in Council, I consider it my duty to support the motion. I need not remind hon'ble members of Council that, in a country where the panchávat-system has been in force from time immemorial, trial by jury cannot be said to be an exotic. The people are familiar with the

institution, and, although it has prevailed here under a different name, its practical working has been the same here as in more civilized countries. It is unnecessary for me to dwell on the well-known advantages of the jury-system, but it is not from any sentimental considerations or a regard for tradition that I support the institution. I do hold that jury-trial is really the bulwark of the liberty of the subject, and that it is a material safeguard of the interests of justice. How the jury-system has been working in Bengal is, I believe, well known to the hon'ble members of this Council. I am well aware that many executive officers are not much in favour of trial by jury, but we should not forget that not a few of them are apt to push their vigour beyond the law. The question lately came, I observe, before the Lieutenant-Governor of Bengal in connection with the police administration report, and I will, with the permission of the Council, read an extract from the Resolution of His Honour showing how essential is the jury-system to the interests of justice, even if thereby now and then miscarriages of justice occur. His Honour remarks :—

'The unwillingness of juries to convict in serious cases involving the issues of life and death may sometimes have been the cause of failures of justice, which would not have occurred had the person been tried by a Judge and assessors. What is now complained of is not, it must be remembered, a new thing. It has been a charge against the system of trial by jury from the first; but it by no means follows that the unsatisfactory results in the trial of murder-cases by jury is solely owing to the unwillingness of the jurors to convict in a case in which a capital sentence would probably be passed. It is in the experience of the Lieutenant-Governor that jurors look with much greater strictness into the evidence and to the conduct of the police-officers than unassisted Judges used to do; and it is much better that it should be so, notwithstanding occasional failures of justice. The over-scrupulousness of juries, if such it may be called, should have its effect on the action of the police and upon the investigations made in Magistrates' Courts, with results which can be only beneficial.'

"Such is the opinion of the responsible head of the Bengal Government, and I believe that all right-minded men who value jury-trial will come to the same conclusion. In fact, I look upon the jury-system as a most useful instrument of self-culture and self-discipline in the administration of the affairs of a nation. It has, however, been urged that all parts of the country are not equally ripe for jury-trial, and that, therefore, the time has not yet arrived for the universal extension of the system to the country. Now, my reply is, that when the wilds of Assam have been declared to be fit for jury-trial, there can scarcely be any part of the country in Bengal, Northern India, Madras or Bombay which cannot be said to be sufficiently advanced for the reception of this boon. I am quite aware that there may be backward parts where jury-trial would not be an unmixed blessing, but as civilization is pro-

gressing and education is advancing the people of those districts will gradually acquire that knowledge and experience which will enable them to enjoy the privilege without injury. Then it is contended that, as the motion involves what I may call a big change, it ought not to be passed without reference to the Local Governments. I confess I do not look upon the motion in that light. It is true that it contemplates a material change by converting assessor-districts into jury-districts, but, as I have already said, if the Government of Assam could extend the jury-system to all the territories under it, I do not see why this Council, knowing the position of the different provinces, cannot extend the system of jury-trial to the whole country without further reference to the Local Governments. I go further. I submit that the Bill before us introduces large and radical changes into the system of jury-trial as regards European British subjects; that is to say, it gives European British subjects the right to claim a trial by jury before a District Magistrate, which they had never before enjoyed, and yet it has been considered unnecessary to refer the matter to the Local Governments for opinion. So if, in introducing such a big change in respect to the trial of European British subjects, it has not been considered necessary to consult the Local Governments, surely this Council can consistently take action in this matter without reference to Local Governments. I think it is due to the Mahárájá to point out that his motion does not at all affect the agreement or arrangement made with regard to the trial of European British subjects. As far as I understand him, he leaves that question where it is, and does not wish to interfere with or disturb the arrangement made. He simply asks that the Indian subject tried in a Sessions Court should have the privilege of demanding a jury just as the European British subject would be entitled to do. In this respect he claims an equality between the European and the Native which I do not think will be considered unreasonable. In fact, from what has fallen from the previous speakers, I perceive that their sympathy is with the motion, though they consider that the present time is not quite opportune for pressing it. Then it may be said that this motion does not come quite within the scope of the Bill because it does not form part of the arrangement made with the opponents of the measure. Now, the hon'ble and learned mover of the Bill has already pointed out that the Select Committee had admitted certain amendments which were outside the agreement. In the same spirit this matter may be entertained, though it is outside the agreement. The object of the motion, as I take it, is to improve the administration of justice, and surely whatever may tend to improve the administration of justice deserves the consideration of the Council.

How the administration of justice will be improved I think the extract which I have just read from the Resolution of the Lieutenant-Governor clearly explains. I hold that the present motion is quite consistent with the scope of the Bill before us, firstly, because it aims at the establishment of an equality in the eye of the law between the different classes of Her Majesty's subjects, which has been the primary object of the Bill, and secondly, because it is a proposal for the improved administration of justice, which, I submit, is also one of the objects of the Bill. If this motion be carried, I need hardly say that the European British subject will lose nothing, but that the Indian subject will gain a great deal, and this is an important point, worthy of the consideration of the Council. I cannot conclude without saying that my countrymen in all parts of the country lay great stress upon jury-trial; that they have submitted an almost universal prayer that, while the jury-system is to be conceded to the Europeans, it shall also be extended to them without limit or distinction. It pleases me to say, if I may use the expression, that, in carrying on the controversy regarding this Bill, the tone and temper of my countrymen have been most moderate and loyal, and this consideration will, I hope, induce hon'ble members of Council and your Lordship to extend your generous consideration to the one prayer of the Native community on a point regarding which they feel so keenly and earnestly."

The Hon'ble MR. EVANS said:—"The Government of India has already intimated, and apparently on sufficient grounds, that it is not possible for them to consider this important question at this stage. It is therefore, under the peculiar circumstances of this Bill, impossible for me to consider or to vote for any amendment which is not accepted by the Government of India. Everybody knows, as far as we are concerned, that the shape which this Bill now assumes is a matter of consent on both sides, and, if I were to take into consideration any matter which is not consented to by the Government of India, I should feel that I was departing from that arrangement."

The Hon'ble MR. ILBERT said:—"I cannot say that my hon'ble friend the Mahárájá of Darbhangá is out of order in moving the present amendment, and therefore I do not take any technical objection to the motion; nor can I say that it is unnatural that he should give notice of the amendment which stands in his name. But having said thus much, I do not know that I can or need do anything more than repeat the substance of what I have said already. I must under existing circumstances entirely decline to follow my hon'ble friend into the large question which he has raised. My friend the

Hon'ble Mr. Hunter has very properly directed attention to the present state of the law on the subject. That law is to be found in the section of the Code of Criminal Procedure which says that the Local Government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district. Whether the amendment which has been brought forward by my hon'ble friend the Maháráját of Darbhangá is or is not based on a correct theory, and whether it is advisable or practicable to apply to all cases and in all districts the extension of the jury-system which he advocates, or only to particular cases and in particular districts, and, if so, to what particular cases and districts, is a question on which, under existing circumstances, I must decline to pronounce an opinion. I have not sufficient information before me to consider the administrative questions thus raised, and therefore I must content myself by saying that the amendment is one which we cannot possibly accept."

His Excellency THE PRESIDENT said:—"I do not propose on the present occasion to enter into the general question of the merits of the jury-system or the desirability of its wider extension in this country. I desire to join my voice to those of Mr. Hunter and Mr. Amír Alí in asking my hon'ble friend the Maháráját of Darbhangá not to press this proposal on the present occasion. I think that he will certainly not advance the object that he has in view by taking that course. The question which he has raised is one of great importance; it is one which I readily admit deserves very full and careful consideration; but it would be, in my judgment, impossible for the Government to accept at this, the last, stage of the Bill an amendment which would have so wide a scope as that which has been moved by my hon'ble friend, without having had time to consider the subject in all its bearings, or to consult Local Governments and others whose opinions are to be taken upon a large question of this description. If such a course were open to me upon this occasion, I should like to move what is called in Parliament 'the previous question.' But no such thing can be done in this Council, and I can, therefore, only say the Government is not prepared to express an opinion now. I admit that the fact which the hon'ble gentleman, Mr. Kristodás Pál, has alluded to, that there appears to be a strong feeling in the country in favour of the extension of the jury-system, is a matter which of itself deserves our consideration; but to oblige the Government to vote against this motion at this time would be unduly to prejudice the further examination of the subject. I make no complaint on the score of regularity against my hon'ble friend the Maháráját of Darbhangá for having raised this question, and thereby drawn additional attention to it; but I confess that I

should very much regret that, by dividing the Council, he should force the Government to pronounce an opinion upon it prematurely, and at the time when they have not the necessary information before them to enable them to form a deliberate judgment upon it. That the question is deserving of consideration I entirely admit, but that it would injure the cause which the Mahárájá has at heart if he were to press for a motion on the present occasion, I cannot for a moment doubt."

The Hon'ble the MAHÁRÁJÁ OF DARBHANGÁ here withdrew his amendment.

The Hon'ble MR. ILBERT moved that the Bill, as amended, be passed.

The Hon'ble MR. AMÍR ALÍ said:—"My Lord, I hope I am in order in offering a few remarks on this motion, in explanation of my reasons for not moving any amendments on the basis of the proposals I put forward in Committee. I have carefully abstained from making any suggestion which was likely to disturb the arrangement in accordance with which the Bill has been amended, or to throw any difficulty in the way of an immediate settlement of the question that has engaged public attention for the last eleven months. Personally, my Lord, I think your Lordship's Government ought to be congratulated in having successfully maintained the principle of the Bill with the consent of the European community. It has been said that, in this matter, the wishes of the European community should not have been considered. I cannot bring myself to agree in this view. No Government can wisely overlook or disregard the sentiments of any class of its subjects, and however much inclined I may feel to deprecate the violent expression of these sentiments in this particular case, I cannot help thinking that in the interests of good government they had to be taken into consideration, and such weight given to them as was consistent with the declared policy of British rule and did not conflict with the just rights of the other subjects of Her Majesty. It is, therefore, with a sense of relief that I view the approaching settlement of this question. With reference to the other points, I desire to say just a few words. There were two objects which I had principally in view in the discussions in Select Committee—*firstly*, to see that the great safeguard which was being provided for the European British subjects of Her Majesty against the illegal exercise of judicial powers may not be turned to the disadvantage of the Natives of India; and secondly, to obtain in favour of the latter certain amendments in those provisions of the Criminal Procedure Code which, owing to the combina-

tion of judicial and executive functions in the Mufassal magistracy, press heavily upon all classes of the community, resulting frequently in scandalous miscarriage of justice. My Lord, the dangers and difficulties which arise from the combination of the two functions in the Mufassal are not imaginary. Having these two objects in view, I brought forward certain proposals which have received only a partial recognition. With reference to the view of the majority of the Committee regarding the safeguards against any failure of justice owing to the large extension of the jury-system in European cases, I have not thought it right to dissent from my honourable colleagues, as I felt sure, should the apprehensions which are entertained in certain quarters prove true, it will be the duty of Government to correct the evil by applying the most suitable remedy, and it is to be hoped that in such an eventuality all sections of Her Majesty's subjects in this country would cordially join in urging upon the Government to place the administration of criminal justice upon a more satisfactory footing. As regards the second object, I must express my regret that my colleagues did not see their way toward accepting my proposal in its entirety. The amendment I proposed would not have increased the work in the Sessions Court to any appreciable extent, while it would have secured an important safeguard against the inconvenience and dangers arising from the combination of judicial and executive functions on the part of the Mufassal magistracy. My Lord, the satisfactory administration of criminal justice in the Presidency-towns is a sufficient proof of the wisdom of the policy by which the two functions are kept apart, and I have reason to believe that, were the same system in vogue in the Mufassal, the recent agitation would have lost much of its force. I was, however, met with the objection that the proposal I made involved a degree of change which required a more careful consideration than the Committee were in a position to give in the short space of time at their disposal. The extent, therefore, to which my proposal has been adopted is small,—too small in fact to be of any practical value,—but I regard it as a step towards that disjunction of the executive and judicial functions upon which in future must depend the best security of the people in the administration of justice. And in view of the recommendation embodied in the report, which I look upon as the most important and valuable concession to the Natives of India, I have thought it right to refrain from bringing forward the proposal in Council. I venture to hope, my Lord, that this recommendation will receive the earnest and early consideration of Government, and I am sure that my countrymen, knowing the anxious desire which animates your Lordship's Government to deal equitably by all classes of Her Majesty's subjects, will rest

content for the present with the small modification which has been made in one of the most obnoxious sections of the Criminal Procedure Code. My Lord, it is a distinguishing feature of your Lordship's administration (in saying this, I speak the mind of the Natives of India at large) that for the first time under British rule the wants and wishes of the people have received *due* consideration; and in view of the anxiety prevailing among all classes of the Native community for some substantial improvement in their favour in the criminal law of the country, I trust that the recommendation of the Select Committee will not be allowed to remain a dead-letter."

The Hon'ble RAÍ KRISTODÁS PÁL said:—"My Lord, before the motion is formally put to the vote, I ask your Lordship's permission to say a few words. I feel it would be wrong on my part to raise a fresh discussion upon a subject which has been already discussed threadbare, particularly as the Bill has reached the stage when no discussion will avail one way or another. Remembering also the deliberate decision of Government that the Bill must be based on the lines of the agreement entered into, I could see no room for any substantial amendment which would prove beneficial, and I am confirmed in my opinion by the proceedings of this day. At the same time, in justice to myself, I must candidly confess with due deference that the provisions of the Bill as amended by the Select Committee, as far as I can see, are not calculated to remove the apprehensions which I ventured to express on the last occasion. It cannot be denied that while race-distinction is removed in one direction, that is to say, as regards a very small class of Native officers, it is deepened in another direction, that is to say, as regards the Native population at large, that the anomaly of jury-trial in petty cases, in cases in which a jury is admitted to be ridiculous, remains all the same, if the District Magistrate chooses to try such cases; that the cure of the invidiousness of the law will depend on the forbearance of the Magistrate, if he will not try petty cases, and of the accused, if he will not claim a jury in such cases; that the risk of failure of justice at the hands of a dominant and sympathising jury is not safeguarded in any way, and that the old evils to poor complainants of the transfer of cases to distant Courts, almost amounting to a denial of justice, from districts where a jury may not be available, will be revived in all their rigours. But I will not prolong a dying controversy by raising fresh objections. Your Lordship was pleased to declare, in winding up the debate on the 7th instant, that a failure of justice such as I had apprehended would be an intolerable evil, that if your Lordship had anticipated it, you would not have been a party to the arrangement made, and that should failure of justice or other grave evils hereafter arise out of the proposed

system, it would be the duty of the Government of the day to apply adequate remedies. I accept this assurance of your Lordship with due submission.

"My Lord, if I have correctly gauged the opinion of my countrymen on this subject, there seems to be a deep conviction among them that the fiery ordeal through which they have passed during the last ten months has brought forth no adequate result, that if they have gained some slight advantages on the one hand, they have lost much more on the other, that the sudden and sad turn which this business has taken at the last moment has fallen like a thunderbolt upon them, and filled them with gloom and dismay. But I should not despond. The main principles of this Bill, though within very narrow limits, being affirmed, I fervently hope that it will prove the precursor of more substantial and abiding reforms. At some favourable time hereafter, when the present storm of passionate feelings and race-animosities, it is to be hoped, will have passed away, when practical experience will have satisfied even the most thorough-going representatives of the domineering class that Native Judges and Magistrates mete out even-handed and uncoloured justice, some hopeful mariner in charge of the vessel of the State, following the signal planted to-day, may steer his course in the same onward path, and give a wider effect to the high hopes and honourable aspirations with which the controversy of the past few months, I am bound to say, has filled the heart of the nation. It is not necessary for me to formulate these hopes and aspirations. Suffice it to say that the nation anxiously looks forward to the establishment of a complete equality in the eye of the law between all classes of Her Majesty's subjects without distinctions of race and religion, to the unconditional extension to Her Indian subjects of the same jury-trial that has been accorded to her British-born subjects,—for it is the bulwark of the liberty of all subjects,—to the removal of the present barrier to the admission into the Covenanted Civil Service through the door of competition, and of the stigma which unjustly attaches to the statutory civilians, by combining, as I conceive, competition with nomination, and to the development of those solid measures of progress which will raise the Native Indians to the level of the European British subjects. The passage of the Bill marks three distinctive and important points, firstly, that the Queen's Proclamation, the Magna Charta of the people of India, has been vindicated with a force, emphasis and earnestness with which it had never before been vindicated; secondly, that a step, albeit a short one, still a well-defined one, has been taken in putting the higher order of covenanted civilians, both European and Native, on a footing of equality which no future Government will dare retrogress; and thirdly, that, if my countrymen prove

equal to the occasion, the onward policy is sure to advance. We are certainly more concerned with the present than with the future; but man does not live for the present alone. His manhood will not progress if he does not think of the future—care for the future—live for the future. Relying on the future, I give my adhesion to the present Bill."

The Hon'ble MR. EVANS said:—"I had not intended to add any observations to those which I have already had the honour to address to the Council to-day, but it is entirely impossible that I should sit silent after the remarks which have been made by the hon'ble Messrs. Amír Alí and Kristodás Pál. I do not intend to follow the last speaker into those matters of controversy which he has freely touched upon, but it is necessary to say one thing most distinctly. I understood the Hon'ble Amír Alí to say that the so-called principle of the Bill was assented to by the European community. I thought I had made it clear on the last occasion—but I will make it clearer now—that I have assented to nothing of the kind, nor have the Europeans generally assented to anything of the kind. They have assented to the passing of this Bill in order to procure peace, but they have retained their own view of their own privileges and rights; and I thought I had made it clear that we no more affirmed the Government view than the Government affirmed our view. My understanding of the settlement is that it is intended to procure peace, and if that stands, well and good. But if my hon'ble friend's countrymen are going to contend that they are entitled to maintain this supposed concession of I know not what principle, and to deprive us of the other portion of the settlement, as he very clearly intimated it is his intention some day or another to do, then I say that the principles of law and natural justice are that, if the settlement is to be ripped up, the parties go back to the *status quo ante*. If any pilot of the future, induced by any such suggestion as this, be so unwise as to guide the vessel of State upon the rock towards which has lately been steered, then most undoubtedly the Europeans will remember and claim the principles of law and justice; and if any endeavour be made to rip up this settlement, they will take their stand upon the settlement of 1872. God forbid that these things should come to pass. But it is necessary for me to say emphatically that we have not conceded a principle of any kind, or to any extent whatever, but that we hold ourselves free to defend our rights if attacked, and are ready to do so."

His Excellency THE PRESIDENT said:—"I stated so fully my views upon this subject in the course of the discussion which arose upon the motion that

this Bill be referred to a Select Committee, that I had no intention when I came into this room of making any further observations upon the matter. To the views which I then set forth I entirely adhere, and it is quite needless that I should repeat them now. The Hon'ble Raí Bahádur Kristodás Pál has repeated briefly some objections which he raised in the former discussion to the practical working of the arrangements now embodied in this Bill. I replied upon that occasion to the remarks which he then made, and as I have seen no reason since then to modify the views which I expressed, I will not take up the time of the Council by repeating what I said at that time. The hon'ble gentleman has remarked that the long controversy which has existed unhappily now for several months has brought to the Natives of the country no adequate result. From that I must entirely dissent. As I stated on the former occasion, I hold that the results which will be secured by this measure are results of the highest importance to the Native community in this country. I then pointed out how the principle upon which this Bill was founded had been maintained, acknowledged, and secured; how a disqualification strongly felt by some of the highest Native Magistrates and Judges in this country would be by this Bill removed, and how the policy which was laid down fifty years ago, and has been steadily pursued since then by successive Governments, has been once more vindicated and affirmed. I believe that these results are of the highest importance to the countrymen of the hon'ble gentleman, and I also venture to think that, though there may be many who may be inclined to criticise—and it is quite fair that they should criticise—the settlement now made, the general feeling of the Native community is that the Bill does uphold and advance a principle to which they attach the highest importance. I cannot, therefore, agree with the hon'ble gentleman in the opinion that those who have supported this Bill and this policy have lost under the recent arrangements more than they have gained. I must entirely adhere to the opinion which I expressed on the previous occasion, that the gains have been large and important, and that, as I then said, nothing has been taken from the Natives, though an additional safeguard has been given to the European community. I do not wish to prolong this discussion. The last thing that I should desire would be to renew for a moment the controversy of the last few months. I earnestly trust that that controversy may now be brought to a close. I hope and believe that the system established by this Bill will be found to work well, and nothing shall be wanting on the part of the Government to secure its successful operation. I might content myself with these remarks, which I have felt bound to make in order to defend the policy, and to point out the results and the gains, of the measure which is now

about to be passed. But I must, before I conclude, say one or two words on the remarks which fell from the Hon'ble Mr. Amír Alí. And, in the first place, while I thank him very much for the manner in which he spoke of the labours of the present Government of India, I cannot take either to myself or to my colleagues the compliment which he was kind enough to pay us. He said that, under this Government for the first time, the desires and wishes of the Natives had received due attention. That is a statement to which I cannot subscribe, when I recollect the many eminent men who have preceded me in the office which I now fill, and when I know how many previous Governments have worked earnestly for the benefit of the people of this country. Each day has its own tasks; the tasks of twenty years ago were not the tasks of the present moment. We have endeavoured to do our duty in the position in which we have found ourselves placed, and we shall continue to do so; but I must deprecate any comparison between the labours of the present Government and the labours of those which have preceded it. With respect to the other remarks of the Hon'ble Mr. Amír Alí, I only wish to say this—the Government naturally attach great weight to the opinions expressed in the report of a Select Committee, composed as the Select Committee on this Bill has been; and when I find that Select Committee saying, in reference to one of the suggestions of Mr. Amír Alí, 'we are fully sensible of the importance of the point thus raised, and we think it well worthy of the consideration of the Government'—it is unnecessary for me to say that such an observation coming from such a source will receive the fullest and most careful consideration of the Government. And now I have no more to say. I rejoice that this question is brought to a conclusion, and I trust that conclusion is one which, when the heat of this controversy has died away, will enable this measure to work smoothly and satisfactorily. I think that to attain that end was an object which the Government did well to desire. We were not prepared—and we shall never be prepared—to sacrifice the principles for which we have contended, for we believe them to be the true principles of English government in this country; but within the limits of those principles it was our duty to seek for any settlement which would secure a general acquiescence at least in the arrangements which we proposed to make. That object has been attained, and if it is honestly and faithfully kept in view on both sides, it will, I have every confidence, be found that the arrangements now made are consistent alike with the honour of the Government and the advantage of the country."

The Motion was put and agreed to.

EXPLOSIVES BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to regulate the manufacture, keeping, sale, conveyance and importation of explosives.

The Council adjourned to Friday, the 8th February, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 9th February, 1884.

Government of India Central Printing Office.—No. 590 L. D.—9-2-84.—500.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 8th February, 1884.

PRESENT:

The Hon'ble J. Gibbs, C.S.I., C.I.E., President of the Council of the Governor General, *presiding*.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble H. S. Thomas.
The Hon'ble Kristodás Pál, Rái Bahádur, C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble H. J. Reynolds.

EXPLOSIVES BILL.

The Hon'ble MR. ILBERT asked for leave to postpone the Motion that the Report of the Select Committee on the Bill to regulate the manufacture, keeping, sale, conveyance and importation of explosives be taken into consideration, and the Motion that the Bill be passed. He explained that he had received at a late hour on the previous day some suggestions as to the Bill which it would be desirable to consider before the Report of the Select Committee was taken into consideration by the Council.

Leave was granted.

CHUTIÁ NÁGPUR ENCUMBERED ESTATES ACT, 1876, AMENDMENT BILL.

The Hon'ble SIR STEUART BAYLEY presented the Report of the Select Committee on the Bill to amend the Chutiá Nágpur Encumbered Estates Act, 1876.

The Council adjourned to Friday, the 15th February, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 11th February, 1884.

Government of India Central Printing Office.—No. 600 L D.—25-2-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 22nd February, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G.

The Hon'ble H. S. Thomas.

The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble T. M. Gibbon, C.I.E.

The Hon'ble R. Miller.

The Hon'ble Amír Alí.

The Hon'ble H. J. Reynolds.

EXPLOSIVES BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to regulate the manufacture, keeping, sale, conveyance and importation of explosives be taken into consideration. He said:—

"When I introduced this Bill last year, I explained that it was based on the English Explosives Act, 1875, but was much shorter and simpler in its details. I justified this difference by reference to the comparatively limited operation which a measure of this description might be expected to have in India, and to the circumstance that the wide differences between various parts of the country made it necessary to provide by a simple power to make rules for many matters which in England would be included in the Act. The papers which have been received since the Bill was introduced have confirmed the views in accordance with which the Bill was prepared, and indeed, go

further, and show that, though an Act of this sort has become indispensable for some purposes and in some parts of the country, the extent to which it is likely to come into practical operation will in all likelihood be for a long time extremely limited. This being so, we have thought it advisable to make the Bill still shorter and simpler by substituting, on some additional points, powers to make rules for direct enactments, and by omitting certain ancillary provisions which can hardly be considered essential to the measure in its reduced form.

"The Bill as amended by the Committee is in all its main provisions a purely enabling measure, and merely empowers the Governor General in Council, or the Local Governments with his sanction, to make rules imposing restrictions and making regulations, and to enforce their observance by fine within certain maximum limits. This power is given both to the Governor General in Council and to the Local Governments, because it seems clear that, while the rules relating to some matters can best be made by a single central authority, the rules regarding others will best be left to the Local Governments. Thus, rules regarding transport by railway can obviously be made only by the Government of India in consultation with the various railway administrations concerned, while, on the other hand, the rules relating to the storage of explosives in towns can be best dealt with by the Local Governments in consultation with the municipal authorities.

"It will be observed that we have added to the Bill power to make regulations for the 'use' of explosives. We think this additional power may be found convenient in some cases in which it may be necessary to use the more dangerous explosives in mining or quarrying or road-making under superintendence of a less trustworthy character than would be available under similar circumstances in Europe.

"The Bill gives very extensive powers, but I need hardly say that we do not contemplate their being used, except when a real necessity for the exercise of them exists. Nothing, for example, is further from our intention than to impose any stringent system of control over the manufacture and use on a small scale of the fireworks ordinarily used by the Native population. So far as I know, the amount of control at present exercised over their manufacture and use has been found amply sufficient. I say this, not because I have any fear that the powers given by the Bill are likely to be abused, but merely with a view to prevent any misapprehension on the point. And, in order still further to remove any such misapprehension, I propose, by an amendment of which I have given notice, to insert in the Bill a provision expressly enabling

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the rule-making authorities to make exemptions from the operation of the rules made by them.

"Chapter VII of the original Bill gave the Governor General in Council unrestricted powers with regard to specially dangerous explosives. We have retained this power, but have limited it to the importation, possession and transport of explosives. It may at times be essential for the public safety to act in the case of such explosives at once, and without having to resort to the somewhat elaborate procedure laid down in the Bill for the making of rules under section 5.

"Sections 7, 8 and 9 of the amended Bill are intended to provide for the matters dealt with in Chapter VIII of the Bill, so far as it seems necessary under present circumstances to provide for them.

"Section 7 provides, in the shape of a power to make rules, for the matters of inspection, search, seizure, detention, removal and the taking of samples, and sections 8 and 9 reproduce, with certain modifications, the provisions of sections 34 and 35 of the original Bill, requiring notice to be given of accidents, and conferring power to enquire into them.

"Then, to avoid the inconvenience which might arise from a person being required to take out licenses both under this Bill and under the Arms Act in respect of the same matter, we have provided a means by which a license granted under the Bill may be made to operate likewise as a license under the Arms Act.

"As the Bill has now been reduced to a mere enabling measure, we have thought it better to leave untouched the enactments of a merely local nature contained in the repealing schedule to the original Bill. These enactments are all of the class which it is within the competence of the local legislatures to repeal or amend, and it will thus be fully open to those who are most competent to form an opinion on such a point to determine how far these enactments shall continue to be applied, and how far the provisions of this Bill shall be resorted to in matters covered by both.

"I have given notice of three amendments. The first I have already explained. As to the second, which deals with the liability to forfeiture, it has been represented that this liability may work hardship in cases where it happens that the person who commits the offence is not the owner of the explosive. I do not see any way to make strict proof of ownership a condition precedent to

forfeiture, but I propose to make the section a little less stringent by making it clear that, where forfeiture is adjudicated, it need not extend to the whole of the explosives in respect of which the offence is committed.

"Lastly, the original Bill contained a provision which was based upon a corresponding provision of the English Act, and authorized the arrest without warrant of a person committing an offence likely to cause explosion by fire in or about a place where explosives are manufactured or kept. We had proposed to omit the section from the amended Bill, but it has been pointed out that in certain cases it might be very useful, and, therefore, I propose to restore it."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 5, sub-section (*2*), after clause (*e*), of the Bill, the following be inserted, namely :—

"(*f*) the exemption absolutely or subject to conditions of any explosives from the operation of the rules."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 10 of the Bill, after the word "committed," the following be inserted, namely :—

"or any part of that explosive, ingredient or substance."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that after section 12 of the Bill, the following section be inserted, namely :—

"13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested, and conveyed as soon as conveniently may be before a Magistrate."

Power to arrest without warrant persons committing dangerous offences.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

CHUTIÁ NÁGPÚR ENCUMBERED ESTATES ACT, 1876, AMENDMENT BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Report of the Select Committee on the Bill to amend the Chutiá Nágpúr Encumbered Estates Act, 1876, be taken into consideration. He said :—

"Last year, when I had the honour to introduce the Bill before the Council, I explained that its scope at the time was exceedingly limited. It was simply to amend a defect, which was common to that Act and the Oudh Taluqdárs' Act. It was found, as the Act stood, that should Government have lent money to the estate, yet the owner might claim release of the estate as soon as the scheduled debts were paid off, without any reference to the debt which was incurred to Government. It was to amend that particular defect, and also to amend a small error which had crept in in regard to the time within which mortgages should be given out in the estate, and it was only for these two purposes, that the Bill was introduced. It was then referred to the Select Committee last year. In the meantime, two or three memorials from bodies of mahájans (money-lenders) in Chutiá Nágpúr were received, and some attention was called to the fact of this Bill being before the Council in the Native Press. The objections taken generally were not in reference to the particular scope of the amending Bill, which, as I have said before, is an exceedingly small one; they were directed against the policy of the original provisions of the Act, VI of 1876, and they seemed to be of sufficient force to justify the Select Committee in not going on at once with the Bill; the work of the Select Committee was accordingly postponed until the Government of Bengal had an opportunity of making enquiries and submitting a report on the working of the Act as it stood. This report has now come in, and the objections taken might briefly be summarised as follows. It was complained that it was nowhere laid down clearly, so that people may be aware beforehand, what classes of estates came under the Act. The memorialists also complained that, in the first instance, on an application being made, it was often accompanied by exaggerated statements of income and insufficient statements of liability, and, as it was the interest of the owners no less than of the manager to have the estates brought under the Act, full enquiry was not made, and that, consequently, estates which might be hopelessly insolvent were too readily brought under the scope of the Act, and so protected from the clutches of the creditors. In the course of the proceedings, when the case came before the Courts, it was asserted that the evidence of bonds was not accepted with that stringency which was the rule in ordinary Courts, but the word of the

debtor was taken against the creditor, and accordingly the debts were cut down too readily. Then they complained that, even the debts which were cut down were not at once paid, the creditors were liable to be kept waiting for many years—twenty-five years, I think, I recollect in one case. They also complained that there was no power of releasing an estate from the operation of the Act even should it be found that it obviously was an insolvent estate, and that no benefit could be derived from going on. And they pointed out one or two other defects in the law which hampered the liquidator in giving effect to its intentions. One was that he could not sell the estate without the consent of the owner, and another was that he could not give a lease for more than twenty years. I think I have fairly summed up the objections raised; and many of them seemed reasonable. The Government of Bengal directed an enquiry, and the result of the enquiry, which appears to have been carefully and satisfactorily made, has now been circulated with the papers of the Bill. It consists of a report from the Deputy Commissioner, another from the Commissioner, and a letter from the Government forwarding the report of the Board of Revenue; and I think these reports quite justify our action in not going on with this Bill at once but giving time for further enquiry. The general result of the reports is to show that the Act of 1876 practically introduced nothing which was very new. It systematised what was formerly the custom; in fact, since 1832, when the Koel rebellion broke out and caused Chutiá Nágpúr to be taken out of the effect of the ordinary regulation law, landed estates in this district have never been subject to sale in execution of decree, and have, as a political measure, always been exempted from sale. When the Act of 1876 was introduced, it was intended to systematise the procedure, and bring it under control; but some of the estates previously protected from sale were, it is admitted, transferred to the operation of the Act without sufficient enquiry as to the possibility of their ever becoming solvent. But the reports showed that, of late years, full and careful enquiries were made in every instance. They showed that the procedure was very much the procedure of the Civil Courts; that the parties were called together, and it was only when the creditors would not bring their books into Court for examination, that the Court was forced to take the debtor's statement; they showed, no doubt, that the Courts went behind the bond, but that was the principle and essential policy of the Act, and that there was necessity for doing so, because, according to the custom of the money-lenders, after every two or three years a fresh bond was taken, in which interest is added to principal and fresh interest accumulates on both; the process is again repeated, so that ultimately interest is demanded three or four times over on the original sum; and, though the man may have paid the principal with a fair rate of interest, yet in a few

years the original amount which had been borrowed was found to have increased four-fold: on the whole, it might be said that the report fully justified not only the policy of the Act but the administration of it. They did, however, admit that there was a good deal in what the memorialists said, and that there were several other points in which the law required amendment. These proposals have been sent up by the Government of Bengal, and the Select Committee have taken them into consideration, and it was to meet these points that the Committee now proposed to alter the Bill in the way which was shown in their report. The principal recommendations of the local officers are, first, that the Local Government should be empowered by the rules to lay down to what classes of estates the Act should be applicable. It was obviously impossible to do this by law, because, in the first place, as I have said before, the principal consideration will always be political expediency; and, in the second place, because anybody who has read the report will see when you go to reduce it into a system, how very complicated and difficult the matter is, and how inevitably it would lead to frequent tinkerings of the Act in order to cover unforeseen cases. But apparently the general consideration would be the size of the estate, and the Bengal Government say that in general the working of the Act should not be applicable to estates under Rs. 2,000.

"The next proposal in order of time and procedure which the local officers made and which we have embodied in the Bill was that the applicant should file a verified statement of the assets and liabilities of the estate; and a verified statement means, of course, that the applicant would be liable to the penalties for false evidence if the assets and liabilities were wrongly stated. So that there should not be the same probability and risk as heretofore of bringing an estate under the operation of the Act when it was of no use to do so.

"Then, a small point I may mention was the time within which the creditors are to send in their statements. In the first instance it was three months, and under special circumstances claims may be admitted within a further period of nine months. This latter period would now be reduced to six months.

"Then, when the adjudication was made on the claim, we came to a point upon which the objection made seemed really serious. It was that the law contained no provision for the amount decreed being paid off at once. On the recommendation of the Government of Bengal, a provision has now been introduced under which the Government may make loans for the payment of liabilities, to be recovered, with small interest, from the assets of the estate. The delay in this case will be transferred from the creditors to the Government.

"We have not been able to meet a proposal of the local officers, which was not accepted by the Local Government, that an estate should be released at the option of the manager after it has once been brought under liquidation. The objection to that was that it would lead to less caution than was desirable in taking estates under management. It was also clear that under such an arrangement great complications would ensue when leases or mortgages had been given, debts had been cut down and payments had been made, and the confusion would be absolutely bewildering. Neither the Select Committee nor the Local Government saw their way to adopt that, and the result of the Bill as it stands will be that the liquidation, having been once undertaken, must go on till all the debts had been paid off, or the estate sold, or the parties came to some arrangement which the Commissioner considered satisfactory and unobjectionable.

"But here we come to another arrangement. In order to enable them to put an end to the management of an insolvent estate, we have had to amend the Bill in another point, which, as I have explained before, has given rise to some dissatisfaction. In the law as it stands, an estate could not be sold without the consent of the owner. This provision does not occur in any other similar Act, and it seems obviously unreasonable that, where a public officer has been called in to manage an estate, because a man is incapable of managing his own property, that public officer should be unable to sell a portion of the estate to save the rest without the owner's consent. Accordingly, to meet that, we have now given power to sell the estate without the owner's consent.

"There was one more point, on which I have given notice of an amendment, which does not come into the report of the Select Committee; but, with the permission of Your Excellency, I will explain what the amendment is now, instead of doing so when moving the amendment. Under the Bill as it stands, a lease could only be given for twenty years, and the only alternative was to sell the property with the consent of the owner. The local officers had objected that it was difficult to get a purchaser, because a great number of these estates were not held directly from the Government, but were jághírs, —assignments held under the superior landlord,—and the peculiarity of these tenures is, that in default of direct male heirs they lapsed to the superior landlord, and could not therefore be transferred without the assent of the superior landlord. This leads to a difficulty very obvious and palpable in the way of sales outright, and the custom of the country consequently is, instead of selling,

to give permanent leases. The permanent lessee, subject to the payment of rent, was able to protect his interest from sale by his superior landlord under the ordinary law, and he is more able to get a transfer sanctioned and approved of by his superior landlord on paying a *nazráná* than to get his sanction to an outright sale. Accordingly, Mr. Power, who found considerable difficulty in applying the Act to a sale outright, strongly recommended, amongst other things, that the manager should have power to grant permanent leases; and the Government of Bengal, after giving the matter very full consideration, had recommended that it be provided for in the Bill."

The Hon'ble MR. REYNOLDS said:—"I wish to say a few words on this Bill, as I have had some experience of the practical working of the Act both as Secretary to the Government of Bengal and as an officiating Member of the Board of Revenue. The Bill before the Council, which is merely an amending measure, does not raise the question of the principle of legislating with the object of affording special assistance and protection to embarrassed proprietors of land. I am not personally an advocate of such legislation; but the principle having been accepted by the law already in force, it is the object of this Bill to improve the administrative machinery, and to rectify such errors as the experience of the last seven years may have shown to exist in matters of detail.

"But, though the question of principle is not raised by the Bill, either in the form in which it was originally introduced or in the form in which it is now submitted to the Council, some of the papers which have been considered by the Select Committee do raise issues which are of a fundamental character. It is contended in some memorials received from money-lenders of the Chutiá Nágpúr Division, and in some articles which have appeared in the public Press, that the Act is unjustly framed and unfairly administered. The memorialists complain that the laws of evidence, of contract, and of procedure, are ignored; that estates are admitted to protection without due enquiry as to their solvency; that the just claims of creditors are summarily cut down; and that there is unreasonable delay in paying off even those debts which the authorities admit to be valid. These charges really fall under two main heads, one of which touches the principle of the Act, and the other is concerned with its administration.

"As to the former, it appears to be the contention of the memorialists that the duty of ascertaining the claims, and the duty of paying them off, should be assigned to two different sets of officers, that the claims should be ascertained by judicial officers under the strict rules of law which govern ordinary transactions, and that the property should then be handed over to the executive

department for the liquidation of the debts. If this had really been the intention of the legislature, the Act of 1876 would have been very improperly described as an Act to relieve certain landholders in Chutiá Nágpúr. Its proper title would have been an Act to enrich certain mahájans. What was the position of these creditors before the passing of the Act of which they now complain? For more than 40 years past they had been restrained from proceeding against landed property, for no sales could take place without the express consent of the Commissioner. If execution of a decree was taken out against a landholder, his estate was sequestrated, and was managed in what was termed the Political Department. The difference is that, whereas this procedure was formerly general, management by Government officers is now confined to those estates which are specially protected under the Act. Against all other landed property the creditor can proceed in the ordinary course of law.

"Then, with regard to the complaint that the managing department goes behind bonds and decrees, it is certainly the fact that this is done, and it was undoubtedly the intention of the legislature that it should be done. The object of the law was to grant equitable relief; and this object would have been defeated if the officer charged with the settlement of the claims had been required to confine himself to ascertaining whether a certain bond had been signed, or a certain decree obtained, and had been precluded from enquiring into the circumstances under which the debt had been incurred, and into the whole series of the transactions between the parties. So far, therefore, as these objections impugn the principle of the Act, I think they admit of a complete answer.

"As regards its actual administration, I am willing to confess that there may have been some grounds for complaint during the first two or three years that the Act was in operation. I do not admit that claims have been unjustly cut down. Some alleged instances of this are put forward in the memorials, and, I suppose, we may fairly assume that these are the strongest instances which would be adduced. But the explanations given in the papers before the Council show conclusively that these cases (to use the words of the Board of Revenue) were not arbitrary reductions of equitable claims, but cases of equitable relief from extortionate contracts. I do not deny that, when the Act first came into operation, some estates, which had no valid claims to protection, were brought under its provisions, and that the enquiries into the solvency of an estate were not always so complete as they should have been before the issue of the vesting order. But I do not think that for some years past any example of mistakes of this kind can be adduced.

"The matters of reasonable complaint which still remain are—first, the delay which takes place in the liquidation of admitted claims; and, secondly, the provision which forbids the sale of an estate without the consent of the proprietor. These will be remedied by the Bill now before the Council. I understand it to be intended that, when the schedule of debts has been finally settled, a loan shall be advanced by Government at moderate interest to clear off all incumbrances, and that the estate shall remain under management till the loan has been repaid. The Bill also gives power to sell the property with or without the consent of the owner, and to withdraw at any time from the management if a satisfactory composition is made with the creditors. These amendments, and the minor improvements which are introduced by the Bill, will, I think, remove all reasonable ground of complaint as regards the working of the measure."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that, after section 6 of the Bill, the following section be inserted, namely:—

Amendment of section 17.

"7. In section 17, for the words 'not exceeding twenty years absolute,' the words 'or in perpetuity' shall be substituted."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INLAND STEAM-VESSELS BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend the law relating to the Survey, and the examination and grant of certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels.

INDIAN STEAM-SHIPS BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on

the Bill to amend the law relating to the Survey of Steam-ships and the grant of certificates to Engineers of those ships.

The Council adjourned to Friday, the 29th February, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 28th February, 1884.

Government of India Central Printing Office.—No. 652 L D.—29-2-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 29th February, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble H. S. Thomas.
The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

NEW MEMBER.

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK took his seat as an Additional Member.

INLAND STEAM-VESSELS BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the law relating to the Survey, and the examination and grant of certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels, be taken into consideration. He said:—

"This Bill, as introduced, was little more than a consolidating measure. It brought together the provisions of some seven local Acts with respect to the survey of inland steamers, the grant of certificates to their officers, and investi-

gations into casualties connected with them. The only alteration of importance was the extension of the period for which a certificate of survey is to be in force from six months to one year; and the only addition of importance was a chapter regulating the carriage of dangerous goods on inland steamers on the same principles as those on which the carriage of dangerous goods by railway is regulated under the Indian Railway Act of 1879.

"Since the Bill has been circulated we have received numerous useful criticisms and suggestions from the various Chambers of Commerce, Port Commissioners and other persons, official and non-official, and by their help we have made some changes in the law which will, I hope, prove to be substantial improvements.

"In the first place, we have altered the procedure for obtaining a certificate of survey. Under the existing law the survey has to be made by two officers, who receive the fees and grant the certificates themselves. Instead of this, we propose to adopt the system now in force under the English merchant shipping law, which is, that the survey should, under ordinary circumstances, be conducted by one surveyor only, and that he should be paid by salary, that the fees should be paid to and accounted for by Government, and that the certificate should be granted by Government on the declaration of the surveyor. As surveys will in future be made only once a year instead of twice, and as we anticipate that they will be made more fully and carefully than at present, we propose to double the rate of fees. But, in order to make the increase of fees press as lightly as possible in the case of small craft, we propose that vessels under 100 tons should pay a fee of Rs. 25 only. The revised scale of fees will be found in the second schedule to the Bill. We have empowered Local Governments to alter this schedule by rules, and we have provided that drafts of any rules which the Local Governments may propose to make for this purpose, or for any other purpose under the Bill, should be published in such a manner as to give persons interested an opportunity of being heard against them before they take effect. Of course, our only object is to fix the fees at such a rate as will prevent the cost of survey from being a charge on the State.

"The Bengal Chamber of Commerce have directed our attention to the great variety of classes to which inland steamers belong. They point out that there are no less than four distinct classes of such vessels, namely: (1) the large river-steamer with its attendant flats; (2) smaller vessels of about 120 tons net register and 80 nominal horse-power; (3) ferry-boats in the Hugli; and lastly (4) steam-tugs, steam-launches, small cargo-boats, tugs and coal-barges plying for hire.

"And they observe that these different classes require different treatment under the law, and that it is impossible to lay down any hard-and-fast rules applicable to all of them. I fully agree with these observations, but I think it will be found that the Bill, as we have now amended it, has become so elastic as to be applicable without hardship or injustice to all the different classes of vessels which will come within its scope. For instance, we fully recognize the fact that all inland steamers do not require a complete survey every year, and that the requirement of such a survey would in many cases entail considerable and needless expense on the owners. Accordingly, we have given the Local Governments power to define by rule the cases in and the extent to which, under ordinary circumstances, a survey may be dispensed with before the grant of a new certificate; and we have no doubt that the power will be exercised in such a way as to avoid unnecessary interference with vessels which are in a substantially good condition.

"Again, we have recognised, and made provision for, the difference between large and small craft with respect to the numbers and qualifications of the officers whom they may be reasonably expected to carry. Most of the smaller inland steamers ply under the charge of Native serangs and engine-drivers. The Bill as introduced required every inland steamer to carry a certificated master and engineer, and recognised only one class of masters and engineers. It was pointed out that the effect of this provision would be to require all these serangs and engine-drivers to pass the same examinations, and obtain the same certificates, as the masters and engineers of the large river-steamers. This objection is perfectly sound, and, in order to meet it, we have divided the masters and engineers into different classes, and have provided for the granting of different certificates to the members of each class There will be first-class and second-class masters' certificates, and there will be engine-drivers' certificates as distinguished from ordinary engineers' certificates.

"Then we have divided inland steam-vessels into two classes, those having engines of eighty nominal horse-power or upwards, and those having engines of under eighty nominal horse-power. We have required every vessel of the former class to carry as her master a person having a first-class master's certificate, and as her engineer a person having an engineer's certificate, and every vessel of the latter class to carry as her master a person having at any rate a second-class master's certificate, and as her engineer a person having at any rate an engine-driver's certificate. In order, however, to relieve persons who are duly qualified to act as masters or engineers of inland steam-vessels, but have not certificates of competency under the special law relating to those vessels, from

the necessity of taking out fresh certificates under that law, we have placed persons having certificates as masters or engineers under the Indian or Imperial Acts relating to sea-going ships in the same position as persons who have obtained masters' or engineers' certificates under the Bill. And, on the recommendation of the Bengal Chamber of Commerce, we have added a proviso making it clear that one and the same person may be both the master and engine-driver of a steam-vessel of under eighty nominal horse-power.

"The existing law provides for the grant of certificates of service, which are to be given without examination, and are to have the same effect as certificates of competency granted after examination. I believe that these certificates of service were devised for the purpose of meeting a transitional state of things, and that the necessity for granting them has long since disappeared. When the examination system was first introduced, it was very right and proper that old and experienced masters and engineers should be released from the necessity of proving their competency by passing an examination. But all the men who were entitled to these certificates have got them long before now, and it has become unnecessary to do more than provide that the certificates of service already granted shall have the same effect as certificates of competency. We have done this, and have not made any provision for the grant of further certificates of service.

"The English Merchant Shipping Acts contain some useful provisions for regulating the conduct of passengers on board steamers, imposing penalties on drunken and disorderly passengers, and on persons travelling without tickets, or refusing to produce their tickets, or committing other offences of a like nature. It has been pointed out that there are no similar provisions in the Indian law, and that an addition to that effect would be useful. Accordingly, we have added to the Bill a chapter enabling Local Governments to make rules providing for the cases in which passengers may be refused admission to, or may be required to leave, inland steam-vessels; the payment of fares and the exhibition of tickets or receipts showing the payment of fares; and the regulation generally of the conduct of passengers in inland steam-vessels; and empowering them to impose fines not exceeding twenty rupees for breach of the rules.

"The Bill, as introduced, extended to the whole of British India, including the Madras Presidency. There is a local law of this character at present in force in Madras, and, as the Madras Government appear to be of opinion that the introduction of such a law is not required, at all events for the present, we have exempted Madras from the immediate operation of the Bill, but have empow-

ered the Governor in Council to extend the measure to that Presidency if at any future time it is found to be required.

"And, lastly, we have reserved to each Local Government considerable powers of exempting certain classes of vessels from the operation of parts of the Bill, or of applying its provisions subject to modifications. As I said before, it is absolutely essential to a measure of this kind that it should be made reasonably elastic. The object which we have kept in view in framing the Bill has been to secure uniformity in matters of principle whilst providing for elasticity and variety in matters of detail; and I have every reason to believe that the result will be a useful and workable law."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN STEAM-SHIPS BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to amend the law relating to the Survey of Steam-ships and the grant of certificates to Engineers of those ships be taken into consideration. He said:—

"This Bill is the twin-brother of the measure which has just passed the Council, and the resemblance between the two is so close as to make a separate description of each unnecessary.

"In this case also we have recast the provisions relating to survey in such a way as to bring them into conformity with the English law. The expediency of making this change has been strongly pressed upon us by the Board of Trade, and I need hardly say that the reasons for making the English and Indian law harmonious in this particular are even stronger in the case of sea-going ships than in the case of inland steamers.

"We have also modified the sections relating to the grant of certificates to officers by omitting the provisions for the grant of further certificates of service, and by legalizing a practice which appears to exist in Bombay of granting certificates for engine-drivers as distinguished from engineers. It seems from the report of Captain Morland, the Port Officer of Bombay, that certificates are issued in that Presidency to Native engine-drivers for working small harbour or coasting steamers; and it is desirable, for reasons to which I have already

referred in speaking of the Inland Steam-vessels Bill, that the grant of such certificates should be recognized and controlled by the law. Accordingly, we provide for the grant of such certificates by any Local Government; but, as we do not know whether all the maritime Local Governments wish to impose the obligation of carrying certificated engine-drivers on the small steamers which are at present exempted from the necessity of carrying certificated engineers, we have left it to the Local Governments to decide whether this obligation shall or shall not be imposed.

"There are only two other points to which I need. call attention in connexion with this Bill. In the first place, it has been said that, by requiring our own steamers to be surveyed once a year, and by not imposing a similar requirement on foreign steamers, except when carrying passengers between places in British India, we place our own steamers at a disadvantage and tend to divert the passenger-traffic between India and foreign ports to foreign bottoms. Now, even if I admitted, which I do not, that the requirement of periodical survey placed a ship at a disadvantage, it is perfectly obvious that in legislating for foreign vessels we cannot go a step further than is warranted by international law. In the provisions which we have made for their survey we have gone precisely as far as Parliament has considered itself justified in going; and, if we attempted to go any further, we should expose ourselves to the risk of international complications of a serious kind. However, we have amended that Bill by making it clear that the term 'British steam-ship' includes ships owned by Natives of India.

"Then, it has been suggested that the provisions of the Bill conflict with those of the Native Passenger Ships Act, which also provides for the survey of ships and the grant of certificates of survey. But, if the two measures are carefully compared, it will be found that there is no such conflict as has been supposed. Under the Bill, no steam-ship can enter upon passenger-traffic of any kind, Native or European, without a certificate of survey as specified in the Bill. If the steam-ship carries more than sixty Native passengers, she will come under the Native Passenger Ships Act, and will then require a further certificate under the Native Passengers Act, in addition to the certificate which is required under the Bill. The two measures, therefore, supplement and do not conflict with each other.

"There is, however, a slight inconsistency between the provisions of the Bill which permit the grant of certificates to hold good for one year, and the provisions of section 13 of the Act, which assumes that no certificates granted

by the British Indian Government can be in force for more than six months. This inconsistency we have removed by section 40, which amends section 13 of the Native Passenger Ships Act. We have also by the same section added some words to section 13 of the Act to make it clear that the certificate referred to must be one which is in force and applicable to the voyage on which the ship is about to proceed or the service on which she is about to be employed."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that after section 34 of the Bill the following section be inserted, namely :—

"35. The provisions of Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*) with respect to the certificates of competency or service of the master and mate contained in section 31 and section 32 of that Act shall apply to certificates of competency granted under this Act in the same manner as if certificates of competency granted to engineers under this Act were specially mentioned and included in those sections."

Production of certificates.

He said :—"The object of this amendment is to remove a slight discrepancy between the English and the Indian Acts which had escaped the notice of the Select Committee. Under the English law, it is necessary to produce the certificates both of the master and the mate and of the engineer before a port-clearance is granted. The Indian law requires the production of the master's and mate's certificates, but makes no provision for the production of the engineer's certificate. It is obviously desirable to remove this discrepancy between the two laws, and that is what this amendment is intended to do."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

NEGOTIABLE INSTRUMENTS ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Negotiable Instruments Act, 1881. He said :—

"The main object of this Bill is to amend the Negotiable Instruments Act with respect to a small point in which it is not quite in harmony with mercantile practice and mercantile convenience. The point is this. Under the Act, a person who wishes to accept a bill of exchange for honour is required to go through

certain formalities in the presence of a notary public. In prescribing these formalities, the Act accurately reproduces the existing law as laid down in the leading text-books. But it appears that in modern mercantile practice the strict observance of those formalities has been found to be unnecessary, and that they are commonly dispensed with. The truth is that, as often happens, the text-books have not kept quite abreast of the times, and have failed to take note of changes which are apt to take place in mercantile usage when it is not stereotyped by codification. The Council are probably aware that the English law on the subject of bills of exchange has recently been codified by a Statute which became law in 1882, a year after our Indian Act. The Bill for this Statute was framed on the lines of the Indian Act, and, as introduced into the House of Commons, contained provisions similar to those which I have described. But, during the passage of the Bill through Committee, the discrepancy between the usage as stated in the text-books and the usage as actually obtaining was discovered and the provisions werer emoved. A similar discovery has been made out here. We have received representations from some leading bankers to the effect that the retention in our Statute-book of an enactment requiring the observance of formalities which are unnecessary and have fallen into disuse has caused, and is likely to cause, practical inconvenience. I propose to apply the obvious remedy by amending the Act in such a way as to bring it into conformity with what has recently been declared to be the law in England and appears to be the established usage here. And I propose to take the opportunity of supplying certain defects in the Act with respect to the appointment and control of notaries public, by making it clear that a person may be appointed a notary either by name or by virtue of an office; that he may be appointed for a limited area, and may be removed from his office; and further, that rules may be made for the guidance and control of notaries appointed under the Act, and may, among other matters, fix the fees payable to such notaries."

The Motion was put and agreed to.

The Council adjourned to Friday, the 7th March, 1884.

D. FITZPATRICK,

FORT WILLIAM;
The 6th March, 1884.

Secretary to the Government of India,
Legislative Department.

Government of India Central Printing Office.—No. 719 L. D —6-3-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 7th March, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble H. S. Thomas.
The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

NEGOTIABLE INSTRUMENTS ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend the Negotiable Instruments Act, 1881, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs, Evans and Miller and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English, and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 14th March, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 7th March, 1884.

Government of India Central Printing Office.—No. 742 L. D.—7-3-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 14th March, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble H. S. Thomas.
The Hon'ble Kristodás Pál, Raí Bahádur, C.I.E.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Darbhangá.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble Amír Alí
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble R. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY presented the Preliminary Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal. He said:—

"In presenting the Committee's report I desire to explain to the Council that the revised Bill is printed, and that the Report has been considered and

passed and duly signed by the members of the Select Committee. But it was only yesterday that the final revision of the Report by the Committee was completed. Some members of the Committee desire to record minutes of dissent; and, as it seems right that their dissents and the Report itself should be published together, the publication both of the amended Bill and of the Report will, at their request, be postponed for a fortnight to give them time to mature their minutes of dissent."

The Council adjourned *sine die*.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM :
The 14th March, 1884.

Government of India Central Printing Office.—No 768 L. D.—17-3-84.—300

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Thursday, the 17th April, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble D. G. Barkley.

NEW MEMBER.

The Hon'ble MR. BARKLEY took his seat as an Additional Member.

SUNDRY BILLS.

The Hon'ble MR. ILBERT moved that the Hon'ble Mr. Barkley be added to the Select Committees on the following Bills:—

To amend the law relating to Local Self-government in British Burma.

To amend the Legal Practitioners' Act, 1879, and the Indian Stamp Act, 1879.

To amend the Burma Courts Act, 1875.

For the validation of decisions passed on appeal by certain Settlement-officers in the Panjáb.

[*Mr. Ilbert; Sir Steuart Bayley.*] [17TH APRIL, 1884.]

To make better provision for the organization and administration of Municipalities in the Panjáb.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY moved that the Hon'ble Mr. Barkley be added to the Select Committees on the following Bills, namely:—

To amend the Sindh Incumbered Estates Act, 1881.

To amend and provide for the extension of the Northern India Takkáví Act, 1879.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 1st May, 1884.

SIMLA;
The 18th April, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 46 L. D.—18-4-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Thursday, the 1st May, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble D. G. Barkley.

BENGAL REGULATION XIX OF 1810 REPEAL BILL.

The Hon'ble MR. ILBERT moved that the Bill to repeal Bengal Regulation XIX of 1810 within the territories administered by the Lieutenant-Governor of the North-Western Provinces be taken into consideration. He said that the object of the Bill was merely to repeal an old Regulation which in the opinion of the Local Government of the North-Western Provinces was no longer required for those Provinces. The Bill had not been referred to a Select Committee, but it had received the approval of the Local Government.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill be passed.

The Motion was put and agreed to.

LEGAL PRACTITIONERS' BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Legal Practitioners' Act, 1879, and the Indian Stamp Act, 1879.

BURMA COURTS' BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Burma Courts' Act, 1875.

The Council adjourned to Wednesday, the 14th May, 1884.

SIMLA;
The 2nd May, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 81 L. D.—2-5-84.—303.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Thursday, the 15th May, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble D. G. Barkley.

LEGAL PRACTITIONERS' BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Legal Practitioners' Act, 1879, and the Indian Stamp Act, 1879, be taken into consideration. He said:—

"The main proposals of this Bill are two: first, to give certain non-chartered High Courts the power of enrolling advocates of their own; and, secondly, to modify the rules as to the persons from whom pleaders are allowed to take instructions.

"There is a section in the existing Act which confers upon the Chief Court of the Panjáb a power to enrol advocates, and it is proposed by this Bill to confer a similar power on certain other Courts, such as the Court of the Judicial Commissioner of the Central Provinces, which are High Courts within the meaning of the Act, that is to say, which are the highest Civil Courts of Appeal for their provinces. The proposal has been objected to on the ground that it draws an invidious distinction between different classes of legal practitioners, and also on the ground that the vakíls of the chartered High Courts are excluded from the benefit of

the measure. Both these objections appear to me to be based on the assumption that the term 'advocate,' as used in the Bill, is synonymous with 'barrister,' and that no persons except barristers are capable of being enrolled as advocates under the Bill. But that is not the case. If members of Council will look at section 8 of the Bill, they will find that it empowers a High Court, with the previous sanction of the Local Government, to make rules as to the qualifications and admission of proper persons to be advocates of the Court, and to enrol advocates in accordance with those rules. Under this power, if a High Court, having regard to the nature of the business to be conducted, and to all the circumstances of the case, thinks it proper to admit as advocates vakils of the chartered High Courts, it can do so. And, as a matter of fact, it appears that the Officiating Judicial Commissioner of the Central Provinces intends to make a rule to that effect.

"It is true that, if a vakíl of a chartered High Court is admitted as an advocate under these rules, he may, under the Stamp Act, be compelled to pay a second fee of Rs. 500; but we think that any hardship arising from this cause might be sufficiently met by the power of exemption which may be made by the Executive Government under the Stamp Act.

"It has been pointed out that the provisions of the Bill will, in certain details, not fit in with the judicial system in force in British Burma under the Burma Courts Act. But the Legal Practitioners' Act, which it amends, does not extend to British Burma, and there is no intention of extending it to that Province. Under these circumstances, we do not think it necessary to make any modification in the Bill for the purpose of meeting the peculiar circumstances of British Burma.

"A somewhat similar remark applies to a fear which has been expressed that a section of the Bill will have the immediate effect of repealing Act I of 1816, which is in force in the Presidency of Bombay. The Legal Practitioners' Act is not in force in Bombay, and the repealing section which we propose to insert in the Bill will not take effect in Bombay unless the Local Government extends it under the power conferred by section 1 of the Act.

"So much for the provisions of the Bill relating to advocates. The only other important provision in the Bill is one which qualifies section 13 of the Legal Practitioners' Act by adding a proviso. Under that section a certificated pleader is liable to suspension or dismissal if he takes instructions in any case except from the party on whose behalf he is retained, or a private servant of

that party, or some person who is the recognised agent of that party within the meaning of the Code of Civil Procedure.

"The section was aimed at the mischievous class of *quasi*-professional intermediaries or touts who intervened between the pleader and his client. But it was found to produce inconvenience and hardship in certain cases where the client was a pardánashín woman, or was incapacitated by infirmity or old age from instructing a pleader in person, and was not in a position to employ the only intermediaries recognised by the law. Therefore, the Bill proposed, in accordance with a suggestion, which I think came from the Government of the North-Western Provinces, that in such cases the pleader should be allowed to take instructions from the relative of a client. This proposal has, however, been criticised on the ground that it affords no relief in cases where the client has no relative fit to be employed for the purpose. We thought that criticism quite just, but we found a difficulty in meeting it without relaxing the rules to such an extent as to let in the class of persons which it was our object to exclude. Under the circumstances, we think that the best course to take is to adopt the suggestion of the Madras High Court and the Vakíls Association of the Calcutta High Court, that is to say, to allow a vakíl to take instructions from any relative or friend authorised by the client, provided that the friend or relative receives no remuneration for his services.

"The proposals of the Bill under this head have been criticised from an entirely different point of view on the ground that they do not afford any protection to pardánashín women or infirm persons against the fraud that may be practised on them by relatives or others wrongfully assuming authority to instruct a pleader on their behalf or, if invested with such authority, abusing it for their own ends. But I ought to point out that this criticism applies rather to the Act which we propose to amend than to the amendment we propose to make. The section we propose to amend was, as I have explained, directed against a class of *quasi*-professional touts, and it made the pleader liable to suspension or dismissal if he took instructions from his client through any intermediate agent except in certain specified cases. Now, what we propose to do is to add to the number of excepted cases. But neither the Act which we are amending nor the Bill touches the question of the authority which the intermediary must have in order to instruct the pleader, or the mode in which he is bound to perform his duty in instructing the pleader. I am quite aware of the dangers referred to in the papers which we have had before us, and it is possible that legislation may be necessary for the purpose of meeting the malpractices to which our

attention has been directed; but no such legislation can be undertaken without further inquiry, and, if it was undertaken, we should probably find that it would have to extend to other cases besides those on which a pleader is retained for the purpose of proceedings in Court. In the meantime, the most effectual safeguard against frauds of this kind is probably to be found in the jealous scrutiny which Courts ought to apply to all cases in which instructions are given either directly or indirectly by pardánashín women and infirm persons.

"We have not seen our way to adopting a suggestion of the Government of Bengal that it should be made necessary for a pleader in every case to declare the name of the person from whom he receives his instructions. We fear that it would be impracticable to carry out this suggestion, because it would, we apprehend, be found that in a large proportion of Muffassal cases it would be hard to say by whom in particular a pleader has been instructed. He often has to collect for himself the materials of his client's case by questioning various members of the family and the neighbours, by searching Court records, and so forth. And it is probable that when any person can be said, in the proper sense of the word, to be 'instructing' a pleader, his connection with the case will not remain a secret.

"The two provisions which I have mentioned were the only important provisions of the Bill as introduced, and remain the only important provisions of the Bill in its amended form. We have adopted one or two suggestions for amending the Act in minor particulars by supplying what appeared to be accidental omissions, such as the omission to confer upon a Judge of a Small Cause Court the same power to suspend, pending inquiry, a pleader or mukhtár who is charged with unprofessional practices as is conferred by the Act on other judicial officers; but we have not thought ourselves justified in extending the very limited scope of the Bill by dealing with any of the larger questions raised in the papers which have been submitted to us. For instance, we have not attempted to touch the vexed question whether barristers, like other legal practitioners, should be made capable of suing their clients and liable to be sued by them. Of course, I am aware that a barrister in this country, where he often receives instructions directly from his client instead of through a solicitor, occupies a somewhat different position from a barrister in England, who has to act through an attorney or solicitor. But I should not think of dealing with so delicate a question as this without consulting the profession generally and ascertaining their views upon the point. Again, we have not thought it proper to act on suggestions for re-opening questions

which, after a good deal of discussion, were deliberately settled, in 1879, by the Act we are now amending. Of this kind are the suggestion that the distinction between pleaders and mukhtárs should be abolished; the suggestion that communications to mukhtárs should be made privileged to the same extent as communications to pleaders are under the Evidence Act; and, lastly, the suggestion that we should revert to the old rule which allowed an advocate of a High Court who had abandoned his own province to practise in any part of British India without any preliminary admission. This was a rule which was altered deliberately by the Act of 1879, and which we should not be justified in reversing now without further inquiry. All these questions might fairly be considered on their merits when the time comes for generally recasting the Legal Practitioners' Act, but I do not think that that time has yet arrived."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BURMA COURTS BILL.

The Hon'ble MR. ILBERT asked for leave to postpone the Motion that the Report of the Select Committee on the Bill to amend the Burma Courts Act, 1875, be taken into consideration, and the Motion that the Bill be passed. He explained that the Home Office had only yesterday made another suggestion for amending the Bill which he would like to have time to consider.

Leave was granted.

The Council adjourned to Thursday, the 29th May, 1884.

SIMLA;
The 16th May, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 123 L. D.—17-5-84—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 4th June, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble D. G. Barkley.

BURMA COURTS BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Burma Courts Act, 1875, be taken into consideration. He said:—

"This Bill does not deal with the large question of reorganizing the Superior Courts of British Burma—a question which, as the Council is aware, has been for some time under the consideration of the Government of India and the Secretary of State. The present position of that question is this. In the year 1882, we sent to the Secretary of State a despatch in which we recommended the creation of a Chief Court for British Burma, and expressed our general approval of a draft Bill for that purpose which had been submitted to us by the Local Government. The Secretary of State, however, did not see his way to the approval of our scheme, and suggested that the objects which we had in view might be sufficiently met by means of a less fundamental alteration of the existing system. We invited the local authorities to consider the Secretary of State's suggestions, and the replies, which we have received, whilst disclosing much

unanimity as to the existence of serious evils which require a remedy, disclose also a somewhat embarrassing difference of opinion as to the particular remedy which is most suitable and practicable. Under these circumstances, it is a task of some difficulty to devise a scheme which will meet the objections urged against our former proposals and at the same time satisfy the reasonable demands and legitimate grievances of the Province. That is the task on which we are at this moment engaged, and I believe that before long we shall send a despatch to the Secretary of State on the subject. In the meantime, however, there are one or two minor defects in the Act of 1875 which, if allowed to remain, will cause considerable difficulty and which it is possible and desirable to remove without waiting until the details of the larger scheme have been matured. It was for the purpose of removing these minor defects that the present Bill was introduced in December last. One of the difficulties arises from the inconsistency between the nomenclature of the different grades of inferior Courts under the Act, and the nomenclature which had been adopted in the recent reorganization of the inferior Executive and Judicial Services. We propose to remove that difficulty by assimilating the former nomenclature to the latter. The Judicial Commissioner has objected to the particular form of amendment which we propose, and has suggested that it would tend to prevent confusion and to dispense with the necessity of amending the Act on each change of designation of the officers of the civil staff if we were to adopt the plan adopted in the Code of Criminal Procedure, of giving to each Court a designation independent of the designation which the officers who usually are to preside in it may have in the Burma Civil Service; that, for example, instead of having Courts of 'Myo-ôks' and 'Assistant Commissioners,' we should have Courts of different grades of Magistrates and Judges. I entirely agree with the Judicial Commissioner that this would be an improvement, and I fully share his objection to the barbarism of interlarding English Acts with vernacular terms. But on going through the sections of the Act I find that it would be impossible to adopt his suggestions without recasting the Act altogether; and, as we have at this moment under consideration a scheme for remodelling the Courts, it would be obviously undesirable to undertake any such extensive alteration of the Act as this would involve. We have, accordingly, made no material change in the form of the clauses as originally introduced, and such additions and alterations as have been made in Committee deal with unimportant or technical matters.

"I have given notice of amendments dealing with two additional points, as to one of which I was not quite satisfied that the clause submitted by the Com-

mittee with their Report would adequately meet the requirements of the case, and the other of which was brought to my notice after the Committee presented their Report. These amendments have, I believe, the full concurrence of my colleagues in Committee, and I propose to defer explanation of them until the time for moving them comes."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that for sections 11 and 12 of the Bill the following be substituted:—

"11. The following addition and insertion shall be deemed to have been made to, and in, sections 76 and 80, respectively, of the Burma Courts Act, 1875, immediately after the passing of that Act, namely:—

Amendments of sections 76 and 80.

"(*a*) To section 76—

'Provided that, if in the opinion of both Courts the point as to which they differ ought to be referred to the High Court, it shall be so referred in manner provided by section eighty, clause (*b*), and thereupon sections eighty-one and eighty-two shall apply.'

"(*b*) In section 80, after the words 'without a Commissioner' the words 'and not being cases provided for by section 76.'"

He said:—"Under the Burma Courts Act an appeal lies in certain cases from the Judicial Commissioner and the Recorder sitting separately, to a Court called a Special Court, which consists of the Judicial Commissioner and the Recorder sitting together. Each of these judicial officers has also the power of referring questions to the Special Court. The constitution and procedure of this Court have given rise to great difficulties, and it is generally agreed that no satisfactory system of appeal can be devised for the Province, unless the local Court of Appeal can be strengthened by the addition of another Judge. That is indeed the most important object of the scheme which, as I have already said, is now under the consideration of the Government of India, and part of the problem which we have to solve is where we are to get this third Judge, what position we are to give him, and what duties we are to assign to him. A Court of appeal consisting of two Judges, one of whom is the Judge from whom the appeal lies, is not a satisfactory instrument of justice, and I should be very glad to see something better established in its place; but until that desirable consummation is attained, we must content ourselves with removing some of the most obvious defects of the existing instrument. Amongst the various sections of the Act of 1875 under which an appeal or reference

may be made to the Special Court are sections 76 and 80, which it is now proposed to amend. Section 76 provides that—

'If in any civil suit or appeal, or in any criminal case or appeal pending in the Court of the Judicial Commissioner or in the Court of the Recorder of Rangoon, the one Court wishes to obtain the opinion of the other on any question of fact or law, or usage having the force of law, or the construction of a document, or wishes to obtain the assistance of the other for the determination of the case pending before it, such Court shall record a memorandum to that effect; and, after the receipt of a copy of such memorandum by the other Court, the said Judicial Commissioner and Recorder shall sit together as soon as may be convenient, and shall form a Special Court for the disposal of the said question or for the determination of the case so pending.

'In case of difference of opinion, that of the Court which sought the opinion of the other shall prevail.'

"Then section 80 runs as follows:—

'Whenever, in cases tried by the Judicial Commissioner and Recorder of Rangoon sitting together as a Special Court without a Commissioner, a difference of opinion arises, the following rules shall be observed:—

'(*a*) In cases coming before the Special Court by way of appeal, and not being criminal cases, if the Judicial Commissioner and Recorder do not concur in a judgment varying the decision appealed from, such decision shall be upheld. Provided that, if the difference of opinion arise as to some point of law, or custom having the force of law, or the admissibility of evidence or construction of a document affecting the merits of the case, and if either the Judicial Commissioner or the Recorder be of opinion that the point should be referred to the High Court, they shall state the point as to which they differ, and forward such statement, with their respective opinions thereon, to the High Court.

'(*b*) In criminal cases and in cases not coming before the Special Court by way of appeal, the Judicial Commissioner and the Recorder shall state the point as to which they differ, and forward such statement, with their respective opinions thereon, to the High Court.'

"I ought to explain that the High Court referred to in this section is defined under the Act to mean the High Court of Judicature at Calcutta.

"You will observe that under section 76 the opinion of the referring Judge *must* prevail in case of difference, and that there is no possibility of any further appeal or reference. But, under section 80, the differing Judges may, in certain cases, and must in others, refer the point in difference to the High Court of Calcutta. Now, it so happened that a short time ago a difficult ques-

tion under the Gambling Act came before the Judicial Commissioner of British Burma. The question was whether a particular form of gambling which appears to be very popular in British Burma and which is known as the *Ti*, or 36 animal game, was or was not an offence under the Gambling Act, VII of 1867, or under the provisions of the Penal Code applicable to lotteries. The Judicial Commissioner was of opinion that it was not such an offence, but, as the question was important, he referred it under section 76 to the consideration of the Special Court, consisting of himself and the Recorder.

"The Recorder differed from his colleague, but did not succeed in convincing him; and thereupon, under section 76, the opinion of the Judicial Commissioner prevailed. Shortly afterwards the self-same question came before the Recorder. He stuck to his former opinion, but referred the question to the Special Court, when the two learned Judges pronounced judgment each in favour of his own previous opinion. On this occasion, however, the referring Judge was the Recorder, who was in favour of sustaining the conviction, and therefore it was sustained, although the Judicial Commissioner was in favour of quashing it. There is no further appeal, and the result is that, until the legislature steps in, that which is lawful outside Rangoon under the Judicial Commissioner is unlawful inside Rangoon where the Recorder's law is in force. This is not a satisfactory condition of affairs, and I shall probably have before long to submit to you proposals for cutting by legislation the tangle which has occurred in this particular case, when I daresay I shall have an opportunity of expounding the mysteries of the 36 animal game.

"In the meantime, it is desirable to prevent the recurrence of a similar deadlock; and therefore we propose that, when a Judge refers a question under section 76 to the Special Court and does not succeed in convincing or in being convinced by his colleague, the Court consisting of the two Judges shall have the power to refer the question to the High Court of Calcutta.

"That is one of the difficulties which has occurred in connection with section 76. Another is this. From the way in which sections 76 and 80 are drawn, it is sometimes not at all easy to say under which of the two sections a particular reference has been made to a Special Court, and I am informed that cases have occurred in which a point has been stated for the opinion of the Calcutta High Court under section 80 although it was doubtful whether the original reference was not made under section 76, which does not admit of such proceedings being taken. In order to remove any doubt as to the validity

of decisions which have been already given on such references, I propose to make the amending clause retrospective, so as to confirm past proceedings."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following section be added to the Bill:—

New section to follow section 94.

"12. After section 94 the following section shall be inserted, namely:—

Language of Rangoon Small Cause Court.

'94A. Notwithstanding anything contained in the Code of Civil Procedure, all or any proceedings, written or oral, before any person appointed under section 94 of this Act and section 15 of Act XI of 1865 to exercise the powers of a Judge of a Court of Small Causes in the Small Cause Court at Rangoon, shall be in such language as the Chief Commissioner may, from time to time, prescribe.'"

He said:—"The object of this amendment is to meet what may perhaps be described as a metaphysical difficulty. Under section 645 of the Civil Procedure Code, the Local Government has power to declare what is to be the language of a Small Cause Court. At Rangoon there is a Small Cause Court with two Judges, one of whom attends principally to English cases and the other principally to Native cases. It would be obviously convenient that the language used in proceedings before one Judge should be English, and that the language used in proceedings before the other should be Burmese; but, as the Court is one and indivisible, a direction to that effect cannot be given under the Civil Procedure Code. In order, therefore, to meet that difficulty, and to allow of the language being different before the two Judges, I propose to make this amendment."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

RANGOON WATER-WORKS BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to confer powers and impose duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of water in that Town. He said:—

"The object of the Bill is to provide the necessary legal powers for carrying out a scheme which is now in progress for supplying the town of

1884.] [*Mr. Ilbert; Sir Steuart Bayley.*]

Rangoon with water from the neighbouring Victoria Lake. The measure is of purely local interest, and the provisions of the Bill are fully explained in the Statement of Objects and Reasons."

The Motion was put and agreed to.

VALIDATION OF MARRIAGE LICENSES BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill for the validation of certain licenses to solemnize marriages granted to Ministers of Religion under Act XXV of 1864. He said:—

"The object of this Bill is simply to remove certain doubts which have been caused by the omission to insert in the Marriage Acts of 1865 and 1872 words continuing in force licenses to solemnize marriages which had been granted under the previous Act of 1864."

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES BILL.

The Hon'ble SIR STEUART BAYLEY presented the Report of the Select Committee on the Bill to amend the Sindh Encumbered Estates Act, 1881. He said that he had to apologise for not having the notice entered on the List of Business. The fact was that the Report of the Select Committee was ready some time ago, and he was only waiting for a demi-official communication from the Bombay Government on the subject, which had not arrived in time to allow of his having the notice entered on to-day's list.

The Council adjourned to Wednesday, the 18th June, 1884.

SIMLA;
The 6th June, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 179 L. D.—6-6-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 18th June, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble D. G. Barkley.

RANGOON WATER-WORKS BILL.

The Hon'ble MR. ILBERT introduced the Bill to confer powers and impose duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of water in that Town, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Barkley and the Mover. He said:—

"This small Bill occupies part of the same ground which is occupied by the Burma Local Self-government Bill, and the provisions of the two Bills will have to be adjusted to each other. The precise mode in which the adjustment should be made will be a matter for the consideration of the Committee to which the Bill will be referred."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *British Burma Gazette* in English and in such other languages as the Local Administration might think fit.

The Motion was put and agreed to.

VALIDATION OF MARRIAGE LICENSES BILL.

The Hon'ble MR. ILBERT also introduced the Bill for the validation of certain licenses to solemnize marriages granted to Ministers of Religion under Act XXV of 1864, and moved that it be circulated for the purpose of eliciting opinion thereon.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

SINDH INCUMBERED ESTATES BILL, 1884.

The Hon'ble SIR STEUART BAYLEY moved that the Report of the Select Committee on the Bill to amend the Sindh Incumbered Estates Act, 1881, be taken into consideration. He said:—

"When I had the honour to introduce this Bill in November, 1882, I explained that it had for its object a very small amendment of what was obviously an omission in the definition of the word 'zamíndár' in the original Act of 1876, by which the heir of a jághírdár who had ceased himself to be a jághírdár and was for all practical purposes a zamíndár yet could not come under the definition of 'zamíndár' as given in the Act because his estate had not paid revenue previous to the passing of the Act. The present Bill was originally drafted merely with the object of remedying this defect, and was sent to the Bombay Government for criticism. The Government of Bombay, in replying, said that the Bill would meet that purpose perfectly well, but added that they had several other points upon which they would soon have to come up again with a view to the further amendment of the Bill. In considering this it appeared to us in Select Committee very undesirable to tinker an Act of this kind frequently, and accordingly we requested the Bombay Government to consider the other points upon which the Bill seemed to require amendment, and to send their views to us, so that we might be in a position to amend the Bill once for all. That has now been done, and that is the reason for the delay that has occurred in the matter and which has caused the Bill to hang fire.

"The points on which the Bombay Government suggested that the Bill should be amended have all been noticed in the Report of the Select Committee, and it will be obvious to anybody reading that Report that those points are none of them of great importance, and that we are only amending methods of procedure and leaving the scope of the Bill as it stood before.

"The first point is the amendment of the definition of 'zamíndár,' which, as I have explained, will now let in not only those heirs of jághírdárs but also the zámíndárí tenants of ex-jághírdárs who would otherwise have been excluded. The other alteration made in the definition is one which I fear has given the Legislative Department a good deal of trouble. It refers to the method of dealing with joint-proprietors' estates. The question is a difficult one, and is fully explained in the Report of the Select Committee. The outcome of the deliberations of the Select Committee has been this, that the property of joint-proprietors paying an aggregate revenue of Rs. 300 may come under the Act, but in dealing with proprietors the law will deal with them as individuals; that is to say, in order to render an application for bringing under the Act one of these joint undivided estates, successful, all the proprietors will have to be represented, and, if successful, then the property, whether separate or joint, of each proprietor will be liable to come under the scheme of liquidation. This is in accordance with the ordinary law, and really it is the only way out of the difficulty, for it would be monstrous that a man who has separate and joint property should be at liberty to get the benefit of the Act for his separate estate while his joint property should not be available for the satisfaction of his creditors, or that his joint property should be administered under the Act and his separate property be left at his own disposal. Practically, therefore, we leave matters very much as they were, except that we remove all doubts as to the possibility of bringing a joint estate paying Rs. 300 as its aggregate revenue under the Act.

"The next point on which the Bill has been amended is that the protection given to estates brought under the Act may now be given, if the Commissioner desires, from the day of the inquiry made upon the application, instead of waiting till the inquiry is completed and the order of management passed. This seemed obviously necessary, and the Bombay Government recommend it. The protection will bar revenue-process as well as civil process. We have also allowed six months as the period within which persons who have under the old law not been able to come in under the Act, but who under the new definition of 'zámíndár' will be at liberty to come in, may bring their applications instead of leaving the time indefinite. We have also decided that an order of management once passed shall be conclusive as to its own validity. This appeared to be very desirable, and the necessity for it was recently illustrated

by the case of a man whose estate had been brought under management, and it appeared that although, as it stood in the books of Government, the estate was rightly brought under management, yet in reality the owner had parted with a portion of his estate but had not registered the transfer. Discoveries of this kind might render the whole process of liquidation null and void. It is, therefore, obviously more convenient that the scheme of liquidation once begun should be completed, and, with the consent of the Bombay Government, we have decided that this is the best way out of the difficulty. We have also provided that a liquidation-scheme may be amended at any time, saving the rights of the creditor; that is to say, that money adjudged to be due to any creditor must, under the liquidation-scheme, be paid during the period of liquidation.

"There is only one other point to which I need refer. It is a condition of some of the jághírs in Sindh that a definite fractional share of the jághír shall be resumed on the death of the incumbent, but it is left to the heir of the incumbent to decide what portion of the estate shall represent the fractional share that is to lapse. Of course, in the case of such estates being brought under liquidation, this custom must cause great difficulty to the manager in leasing or otherwise disposing of the land, because he does not know what land he has to deal with. To meet this difficulty we have arranged that, if an estate is brought under management of this kind, the manager shall, after consulting the persons interested, decide what portion of the land will come under the resumption-clause. He will then be at liberty to deal with the rest without any difficulty arising from that cause."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the Indian Salt Act, 1882. He said:—

"The reasons for making the Motion which I have the honour to bring forward are explained in the Statement of Objects and Reasons, and it is scarcely necessary for me to add much to what is said in that Statement. I may, however, briefly explain that it is thought desirable, on grounds which it is at present unnecessary to enter into, to exclude Sindh from the operation of the Salt Act, and to legislate in Bombay with the object of making one Act applicable

both to the Province of Sindh and to Bombay itself; and therefore it has been thought necessary to take measures to prepare for the repeal of so much of the Indian Salt Act as applies to the Province of Sindh. Opportunity has been taken of this necessity to clear up a point on which some doubt has recently been thrown with regard to the importation of salt into Sindh. Under the Inland Customs Act of 1875, a notification was issued by which the Governor General in Council prohibited the transit of salt into any part of Sindh unless under certain conditions. Section 27 of the Indian Salt Act of 1882 provides that 'the Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories' (including Sindh) 'or any part thereof.' It was held by the Judicial Commissioner of Sindh that the notification, to which I have referred, was inconsistent with section 27 of the Indian Salt Act, in so far as 'it prohibits the transit into Sindh of salt from foreign territory, whereas the section empowers the Governor General in Council to prohibit absolutely or conditionally the importation of salt into, and the transit of salt over, the territories referred to in it, and that importation applies only to salt brought as merchandise for the purpose of commerce and in merchantable quantities, not to small quantities brought for other purposes.' When this ruling was brought to the notice of the Government of India, it was of opinion that the interpretation given to the Act was neither in itself correct, nor consistent with the intentions of those who framed the Act; and as a temporary measure the Government issued a notification, laying down, in supersession of the notification of the 13th November, 1880, to which I have referred, that the Governor General in Council was pleased to prohibit absolutely the importation into, or the transit over, the Province of Sindh, or any part thereof, of salt produced or manufactured in foreign territory or in any Native State, or brought from foreign territory or from a Native State. Advantage has been taken of the present occasion to insert in the Bill, which I have now the honour to ask leave to introduce, the word 'bringing' instead of the word 'importation,' so as for the future to place the matter on a definite basis, and to exclude the possibility of further doubt arising."

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 25th June, 1884.

SIMLA;
The 20th June, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 213 L. D.- 20-6-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 25th June, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble D. G. Barkley.

KHOJÁ SUCCESSION BILL, 1884.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend and define the law of Testamentary and Intestate Succession to Khojás. He said:—

"The Khojás are a small sect who were converted from Hinduism to Muhammadanism about 400 years ago, but who notwithstanding their conversion still retain to a great extent their Hindu laws and usages. They are, as a rule, traders by occupation, and they are to be found in almost all the trading communities of Western India, and on the seaboard of the Indian Ocean,—not only in British India but in such places as Cutch, Muscat and Zanzibar. It appeared, from some enquiries made in a lawsuit heard about 18 years ago, that there were then about 2,800 Khojá houses or families in Sindh, about 5,000, in Kathiawar, a considerable number (the precise number is not stated) in Cutch and Guzerat, 450 in Zanzibar, 400 in Muscat, and about 1,400 in Bombay and the immediate neighbourhood. There are Sunni Khojás and Shia Khojás, but the great majority of them are Shias, of the particular variety known as

Shia Imámí Ismailís, who owe spiritual allegiance to the hereditary Imáms of the Ismailís. The representative of these hereditary Imáms was, at the time when the present legislation was first contemplated, and until quite recently, a Persian nobleman, known as His Highness Ágha Khán, a man of romantic history and romantic lineage, claiming descent in direct line from Alí, the Vicar of God, through the seventh and (according to the Ismaili creed) the last of what are called the revealed Imáms—Ismail, the son of Jaffir Sadiq. This nobleman, after a series of adventures in his own country, in the course of which he seems to have seized and held for some time the Province of Kirman, fled to Sindh and there raised a body of light horse which was of some service to General Nott and General England during the first Afghan war (in the years 1841 and 1842), and afterwards to Sir Charles Napier in his conquest of Sindh. In 1845 he went to Bombay, and there spent, with one short exception, the remainder of his days, living in considerable state and enjoying the homage of his spiritual followers. This homage appears to have been of some substantial value, for it is stated that his yearly income, derived from his votaries in various parts of India, and, it is said, in some remote parts of Asia, averaged about £10,000 sterling. The greater part of this income is said to have been spent by his late Highness in horse-racing, a pursuit of which he was for some time one of the most munificent patrons in Bombay. His Highness Ágha Khán died last year, and has been succeeded in the Imámship by his son, who is known as His Highness Ágha Alí Sháh. So much for the spiritual head of the Shia Khojás, whose peculiar relation to his adherents has a very intimate bearing on some of the provisions of the Bill which I am asking leave to introduce.

" Now, the Khojás are, as I have said, subject partly to the Hindu and partly to the Muhammadan law, and they retain the former law to such an extent in matters connected with property and succession that it is presumed to apply to them until the contrary is proved. The extent to which it does apply to them has always been a matter of considerable doubt, and, as they are a wealthy community, the doubts on the subject have given rise to a great deal of litigation, insomuch that the Khojás occupy a space in the reports of the Bombay High Court quite disproportionate to their numbers.

" Among the suits relating to them are three of especial importance—one decided by Sir Erskine Perry in 1847 and reported by him in his volume of Oriental cases; another decided in 1866, after a hearing of 24 days, by Sir

Joseph Arnould, whose elaborate and most interesting judgment is our principal source of information about the Khojás; and a third, decided in 1875, by Sir Michael Westropp, after a hearing which occupied the Lower Court for twenty-four days, and the Appellate Court for four days. In this last case Sir Michael Westropp, the then Chief Justice, after describing the state of the law, went on to remark:—

'It is, however, evident that the Khojás are not as firmly bound in matters of succession and inheritance by the Hindu law as Muhammadans proper are by the Muhammadan law and the Hindus by the Hindu law, and hence it is that it would not be reasonable to require such stringent proof of a custom of inheritance amongst them differing from ordinary Hindu law as from a Hindu.

'Now, it is manifest that such a state of the law must greatly encourage litigation, and we cannot help thinking that it would be most desirable that the Government should take steps, as was done in the case of the Pársís, to ascertain the views of the majority of the community on the subject of succession, and should then pass an enactment giving effect to those views. Unanimity, of course, could not be expected, but the rules which were found generally to prevail might be made law; and though the religious differences existing among members of the Khojá caste might create some difficulty, it would not, we think, be insuperable.'

"Sir Richard Temple's Government acted on this suggestion and appointed a Commission, of which Mr. Justice Maxwell Melvill, of the Bombay High Court, was President, and of which the other members were His Highness Ágha Alí Sháh and three other gentlemen representing the Shia Khojás, one gentleman representing the Sunni Khojás, and Mr. Spencer, then Acting First Judge of the Small Cause Court at Bombay.

"The Commission took the greatest pains to ascertain the customs and views of the Khojá sect in the Presidency of Bombay and other parts of the country, and after much consideration and discussion agreed on a draft Bill, subject to a dissent on certain specific points which was signed by His Highness Ágha Alí Sháh and by one only of the three other members representing the Shia division. This Bill was approved by the Government of Bombay and sent up to the Government of India, and it constitutes the basis of the Bill which I am now asking leave to introduce. It raised several difficult questions, and it has been the subject of a great deal of correspondence between the Goverment of India and the Government of Bombay—a correspondence which I found in active progress when I came out here, and which continued until the latter end of last year.

"I do not propose to trouble the Council with the details of the Bill, but to confine myself to the more important of the questions of principle which it raises, and to explain the course which it is proposed to take with respect to each of those questions and the reasons for adopting that course.

"The first of these questions is raised by a section of the Bill, which defines the application of the measure—a matter which was not clearly provided for in the Bill prepared by the Commission. The section proposes to enact that the property, whether moveable or immoveable, in British India of a Khojá dying after a specified day shall be regulated by the rules contained in the Act wherever he may have had his domicile at the time of his death. If you compare this provision with the corresponding section of the Indian Succession Act, you will find that, whereas it coincides with it as respects immoveable property, it involves an important deviation from it as respects moveable property; for section 5 of the Indian Succession Act says:—

'Succession to the immoveable property in British India of a person deceased is regulated by the law of British India wherever he may have had his domicile at the time of his death. Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.'

"Whereas the Bill proposes to disregard domicile in the case of moveable as well as in the case of immoveable property. Now, the rule embodied in the Indian Succession Act is not only the rule of one of the most important of our Codes, but also, as a rule of what is called private international law, has obtained general acceptance among the civilized nations of the West; and we should not be justified in departing from it unless there appeared to be good reason for supposing that it is not suitable to the peculiar circumstances of the Khojás. I think that there are such reasons.

"In determining the question by which rule the succession to moveable property should be regulated, the choice is practically between the law of the domicile of the deceased and the law of the situs of the assets; that is to say, the law of the place where the man had his home and the law of the place where he left his property. Western nations have generally agreed to apply to succession to moveable property the former rule—the rule of domicile—and not the latter. The objections urged against applying the law of the situs to moveable property are chiefly that a man's moveables are apt to be scattered over many jurisdictions each of which has a readily ascertainable law of its own; that accordingly, if the law of the situs is applied to them, his estate will be broken

up into many fragments, all governed by different laws; that a man's moveables may change their place; that the most important of them—goods employed in commerce—are constantly changing their place; that accordingly, if the law of the situs is applied, it will be impossible to foresee the particular law under which they will fall on his death; and, lastly, that the rule of the law of situs does not clearly provide for the portion of the assets which consists of debts or other obligations existing in favour of the deceased. Various theoretical reasons have also been adduced for preferring the law of the domicile, but it is probably practical considerations of the kinds to which I have referred that have turned the scale in its favour.

"Now, do these considerations apply to the case of Khojás dying domiciled out of British India and leaving moveable property in British India? The places out of British India in which Khojás are principally found are, as I have said, such places as Cutch, Zanzibar and Muscat. Now, at a place like Zanzibar there is nothing that can be called a territorial law of succession, and the Courts would probably try to apply the personal law of the deceased, which in the case of the Khojá is *ex hypothesi* unsettled and unascertainable. Thus, there would be, in such a case, no local law of the situs which would conflict with the law applying to the assets in British India, and no law of the domicile to which recourse could be had; so that to give the law of the domicile a preference over British Indian law would be to substitute a congeries of indefinite and half established customs for a law to the application of which no reasonable objection could be made. This being so, the balance of convenience would appear to be, in the case of the Khojás, against allowing the law of the domicile to prevail as to British Indian assets. And a further advantage of adopting the other rule would probably be that, as Consular Courts at Zanzibar and elsewhere would naturally apply British Indian law, the rule would probably come in course of time to be adopted as a personal law applicable to Khojás in all foreign States in this part of the world.

"This was the first question of principle which we had to settle. The next related to the difficult subject of mixed marriages. The Khojás are a very exclusive community, and look with great disfavour on marriages with any person outside their body. None of them deny—at least so we are informed by the president of the Commission—that the marriage of a male Khojá to a female who is not a Khojá is perfectly valid if within the limits allowed by Muhammadan law. But at the same time they are anxious to go as far as they can in the direction of discouraging marriages of this kind. Accordingly, all the Khojá members

of the Commission agreed that only a Khojá widow should be entitled to inherit from her husband; but the Sunni Khojás, who in this matter appear to hold views of a slightly more liberal shade than their brethren of the Shia division, were willing that the sons of a non-Khojá's wife should take some share in the inheritance. Eventually the Commission agreed upon what they called a compromise. They confined to a Khojá widow the rights of a widow in her husband's inheritance, but they invented a term—'alien son'—which they defined as meaning 'the male offspring of a male Khojá and of a female, not being a Khoja, legally married according to the rules of Muhammadan law in force in the sect to which the Khojá in question belongs.' But when you came to see what the rights of the alien son were to be in the inheritance, it turned out that he had no rights at all, and that he was in all respects, except the mere name, treated as if he were illegitimate. I do not refer to daughters, because daughters were placed on an entirely different footing with respect to inheritance. This so-called compromise approved itself not only to the Commission but to the Bombay Government; but with all deference to those high authorities it appears to me that, so far from being a compromise, it was a complete surrender of the principle at stake. The practical effect of the proposals of the Commission would be to place the non-Khojá widow for all the purposes of the Bill on the same footing as a concubine, and the children of a non-Khojá wife on the same footing as bastards; and there is not much difference between doing this and declaring the marriage invalid.

"Now, there are to my mind serious objections on principle to the acceptance of this proposal. Although in legislation of this kind, which is avowedly an attempt to define and make more precise certain usages and customs, we are bound to follow as closely as we can the usages and feelings of those for whom we are legislating, yet there are limits to the distance which we are justified in going in this direction, and the legislature cannot, in my opinion, go as far as the Courts of law. There are, as we all know, certain customs and usages which a Court of law declines, and very properly declines, to enforce on the ground that they are immoral and contrary to public policy. But there are also customs which a Court of law might feel itself bound to recognise or even to enforce, but which nevertheless the legislature would hesitate to impress with the seal of its authority. It is one thing to recognise a rule as existing, but quite another to give it the *imprimatur* of the legislature as a rule which ought to exist. Under what circumstances and to what extent the legislature would be justified in interfering to set aside restrictions on marriage based on religious or caste differences is a question

on which I need not enter, and about which there would probably be some difference of opinion. But on one point I think we should be all agreed, and that is that we should not interfere by legislation to enforce such restrictions. At least I for one would never be a party to any legislation which should throw a doubt on the validity of mixed marriages.

"But the argument against adopting the proposals of the Commission goes further than this; for although the majority of Khojás look with disapproval on marriages of this kind, and possibly regard them as sinful,—opinions with which we have not the slightest wish to interfere,—yet, as I have said, it does not appear to have been even asserted that such marriages are by existing Khojá law or custom invalid. We are not now proposing to pass a law defining or amending the law of marriage among Khojás; and in a Bill which is not dealing specifically with the subject of marriage it would be manifestly improper to throw doubt by a side wind on the validity of certain marriages which, according to existing law and usage, are perfectly valid.

"Accordingly, in the Bill which I am asking leave to introduce you will find no distinction made between Khojá widows and non-Khojá widows, and no definition of an 'alien son.' The Bill defines 'son' to be a legitimate son, and leaves 'widow' undefined, and then proceeds to declare the rights of sons and widows, trusting to the Courts to decide as they will on principles lying outside the law of succession who are legally entitled to the status of sons and widows.

"Whilst I am on the subject of definitions, I may mention that I have omitted the definition of 'undivided family,' which was to be found in the Commission's Bill. The institution of the undivided family appears to prevail among the Khojás, and to resemble, but to be by no means identical with, the undivided family of Hindu law. Now, he would be a bold man who would attempt to define precisely and exhaustively the characteristics of the Hindu undivided family, but it would require still greater boldness to attempt to define the undivided family with a difference which is to be found among the Khojás. It is true that the Commission had attempted such a definition, but when the matter came to be examined it was found that the definition would not hold water. Under these circumstances, we thought it the more prudent course to leave the term undefined.

"The next point on which the Bill departs from the recommendation of the Commission relates to the succession of remote relations to the inheritance of a

person who dies intestate. The Commission's Bill admitted to the succession only those of the 'more distant relatives' of the intestate who were on the father's side, and confined it to such of them as are within the seventh degree of kindred. On failure of this limited class of distant kindred, section 42 gave the property 'to the *jamát* of that sect of the Khojás to which the intestate belonged at the time of his death, to be held and applied according to to the customs of the said *jamát*.' Even this did not satisfy the two dissenting members of the Commission and some of the other adherents of His Highness Ágha Khán, who, as Imám, was the person chiefly interested in the succession of the *jamát*. They contended that the *jamát* should come in after the nearer relations. This point was very carefully considered by the Government of India in consultation with the Bombay Government, and the conclusion they came to was that it was impossible to exclude the heirs of deceased persons in favour of any such institution as a '*jamát*' or any person or authority representing such an institution. Of course, it is quite open to any Khojá who desires that his property should be devoted to any charitable or religious purpose, or should be enjoyed by any spiritual person for whom he entertains a special veneration, to dispose of his property by will, or otherwise in accordance with law; but if he dies intestate, it would be contrary to all established principles to enact that his property should devolve otherwise than upon his relatives.

"Apart from this objection on the ground of principle, there appear to be practical objections to the proposal as formulated by the Commission. You ask what a *jamát* is. It appears from Sir Joseph Arnould's judgment in one of the cases to which I have referred that it is an assembly in council of all the adult male members of the Khojá community of the place. Now, of course, it is obvious that doubts might arise as to the constitution of a *jamát* with respect to the religious belief, the residence of the deceased, his attendance at the *jamát*, and on other similar matters. Then there might be doubts as to who were the other persons actually belonging to the *jamát* to which the deceased belonged so as to be entitled to the property; and further there might be doubts as to how the property of a deceased intestate Khojá was to be held and the objects to which it was to be applied. It is quite true that the Bill prepared by the Commission proposed to say that the property was to be held and applied according to the customs of the *jamát*; but if you refer to Sir Joseph Arnould's judgment, you will find that, as a matter of fact, there are no customs at all to look to." (The Hon'ble. MR. GIBBS.—"Excepting as to dinners, I think.)" "There may

possibly be customs as to dinners, but the fact appears to be that, though a *jamát* collects large sums of money through its officers, it only does so on behalf of the Imám; the money collected is passed on to him, and if the *jamát* wants any portion of it for its own purposes, such as the dinners to which Mr. Gibbs has referred, or the keeping up of the *jamát-khánd* (the council-room or guildhall of the community), it can procure it only as a grant from the Imám. Practically, therefore, to give the money to the *jamát* is to give it to the Imám, and it appears to be absolutely in the discretion of the Imám to spend the money as he pleases; and it appears from the judgment of Sir Joseph Arnould that the late Imám used to devote the money derived from this source to such purposes as horse-racing. Practically, therefore, if you give the succession to the *jamát*, it is the same thing as giving succession to the Imám, and the property may be devoted by him to such purposes as he thinks fit, whether religious or secular. It has been said that there is practically no difficulty in ascertaining how the money ought to be spent, but it is quite clear that we cannot legislate on a basis such as this. We should have to define the constitution of the *jamát*, and we should have to define carefully how money belonging to the *jamat* should be applied, and it would be impossible to place the property at the absolute disposal of any individual, in whatever degree of veneration he might be held. That being so, we have excluded the *jamat* from the succession, and the Bill extends the succession to relatives of the intestate, both on the father's and on the mother's side, without limit of degree, and then goes on to apply the ordinary rule which makes the Crown the ultimate heir in the very rare occasions in which the owner of property dies and leaves no person entitled to succeed under the ordinary provisions of law.

"One of the most difficult parts of the Bill—to pass to another subject—was that which relates to the rights and interests of a widow or mother taking by succession in cases where there are in existence certain male relations entitled to the inheritance subject to her rights. The interest of a Khojá female succeeding under these circumstances resembles the well-known estate of the Hindu widow, but with very important differences, some of which are not easy to understand or explain. The provisions of the Bill on this subject have been worked out with very great care by Mr. Fitzpatrick, who has devoted an immense deal of trouble to the Bill, and are merely a development, with the requisite amplifications and the additions of the necessary machinery, of the proposals formulated by the Commission. On one point we have depart-

ed, not indeed from the substance, but from the language, of the Bill prepared by the Commission. They proposed to call the widow's interest a life-estate, and to describe those who came after her as 'reversioners.' But terms like these, borrowed from the highly technical and artificial nomenclature of English law, are always apt to suggest false analogies when applied to Hindu legal conceptions, and we thought it better to discard them. For the purpose of describing the position of the Khojá female taking the limited estate which is given her under this Bill, we have suggested the term 'restricted owner.' The chief advantage of this term is that it has not already any technical meaning, but it is quite possible that some one may be able to suggest some more appropriate phrase, and, if so, we shall be only too glad to adopt it. The rights and liabilities of this restricted owner are carefully defined in the Bill; but I will not dwell on them now, because they are of a very technical character and will be found fully explained in the Statement of Objects and Reasons. As to the power of alienation which should be given to a widow or mother taking by succession, there was not a complete agreement among the members of the Commission. His Highness Aghá Alí Sháh and some of his adherents were anxious to give her somewhat larger powers of alienation for religious purposes; but on this point the Government of India, after hearing the arguments adduced on both sides, came to the conclusion that they ought to support the views of the majority of the Commission. So much as to intestate succession.

"In dealing with the wills of Khojás, the Bill, following generally the lines of the Hindu Wills Act, proposes to apply to them certain sections of the Indian Succession Act with modifications; but there are difficulties, with which some of us are familiar, connected with the construction of the Hindu Wills Act, which made it necessary to depart in some points from the form and language of that measure. The difficulties to which I refer are these. The Succession Act contains provisions which give or assume the existence of a power of disposition by will in favour of unborn persons. The Hindu Wills Act applies these provisions to certain Hindus, but qualifies their application by the proviso that nothing in the Act is to authorize a Hindu to create in property any interest which he could not previously have created, that is to say, could not have created before the passing of the Hindu Wills Act. Now, in the famous *Tagore* case, which was pending when the Hindu Wills Act was passed and was decided shortly afterwards, the Judicial Committee of the Privy Council held that a Hindu could not under his own law, as unaffected by our legislation, make any disposition by will in favour of an unborn person; and the High Court at Calcutta, in a judgment delivered a short time ago, and against

which no appeal has, so far as I know, been lodged, have decided that, under the proviso in the Hindu Wills Act, when read in connection with the decision of the Judicial Committee in the *Tagore* case, a Hindu has no power to make a disposition by will in favour of an unborn person, notwithstanding the incorporation in the Hindu Wills Act of certain sections which imply the existence of such a power; that is to say, they have held that the power of a Hindu to leave property by will to an unborn person is precisely the same as it was before the Hindu Wills Act was passed; in other words, that he has no such power at all. But the Judges made some strong remarks as to the inconsistency between the language of the incorporating Act and the language of the sections which it incorporated. After those remarks it was quite impossible to take the Hindu Wills Act as a precise model for legislation in the present case, and, practically, two courses lay open to us, either to give Khojás the same power of disposition in favour of unborn persons as is given by the Indian Succession Act, or else to place them in the same position as Hindus under the Hindu Wills Act are declared by judicial decision to occupy; that is to say, the position of not having any power to make such a disposition by will. It was clear that the question as to which of these two courses should be adopted stood on grounds altogether independent of those on which the perpetuity question among Hindus had been discussed; for it must be borne in mind that the Khojás are not Hindus, although they have in certain particulars retained some of their customs and usages. Under these circumstances, the Government of India consulted the Bombay Government as to which of the two courses should be adopted, and intimated in their communication that they would be willing to adopt whichever of the two courses might be considered most expedient having regard to existing practices and usages among the Khojás. The reply which we received was to the effect that, as far as appeared, there was no recognized definite rule among the Khojás bearing on the point; that it was unlikely that any attempt had hitherto been made among them to create by will an interest in favour of an unborn person; that there was thus a *tabula rasa;* and that it was quite open to the legislature to legislate on the subject as it thought best, without any fear of violating an existing custom or of running counter to any prejudice or desire of the Khojá community. This being so, the Government of India have come to the conclusion that it is not desirable to confer by law on the Khojás any power of testamentary disposition in favour of persons not in existence at the time of the testator's death; and accordingly all portions of the Indian Succession Act which confer or assume the existence of such a power, have, as far as practi-

cable, been omitted from the sections which we have incorporated, and we intend to insert a proviso to the effect that nothing in the portions of that Act made applicable shall confer such a power. It appears to me that, if the question is to be settled by reference to considerations of general expediency apart from any pre-established usage, the balance of convenience is in favour of not superadding to the complications which arise out of Hindu family law the further complications which we all know are apt to arise out of testamentary settlements.

"I may add that, in order to meet the objections which were urged by the Calcutta Judges against the practice of wholesale incorporation by reference, I propose to put in a schedule to the Bill those sections of the Indian Succession Act which are to be incorporated in it, showing precisely the modifications which are to be made in the sections as incorporated.

"These, I think, are the only points in connection with the Bill on which I need touch at the present stage, and I will merely conclude by apologizing for the length to which I have been compelled, by the nature of the subject, to carry my explanations."

His Excellency THE PRESIDENT SAID:— "It is needless that I should say that ample time will be given for the consideration of this Bill by the parties concerned before it is proceeded with in its various stages."

The Motion was put and agreed to.

INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN introduced the Bill to amend the Indian Salt Act, 1882, and moved that it be circulated for the purpose of eliciting opinion thereon.

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

1884.] [*Mr. Barkley.*]

PANJÁB COURTS BILL, 1884.

The Hon'ble MR. BARKLEY moved for leave to introduce a Bill to amend the law relating to Courts in the Panjáb. He said :—

"The object of this Bill is to make the changes in the law under which the Panjáb Courts are now constituted, which are required for the purpose of giving effect to the arrangements for the improvement of the judicial agency and the reform of the appellate system, which form part of the scheme for the reorganization of the civil administration in the Panjáb recently sanctioned by the Secretary of State for India on the recommendation of Your Lordship's Government. These changes are so numerous that the most convenient mode of carrying them out appears to be to repeal the Panjáb Courts Act of 1877 and include the whole of the law on the subject, except so far as it is to be found in the Criminal Procedure Code, in the Bill which I have now the honour to ask leave to introduce.

"The arrangements proposed involve a further step in the direction of relieving from judicial duties officers employed in the revenue and general administration of the Province. When the Panjáb Administration was organized, thirty-five years ago, all its officers, from the members of the Board of Administration down to the Tahsíldárs, were invested with civil and criminal jurisdiction in addition to their revenue and executive functions, and there can be no doubt that this was the arrangement best suited to the earlier days of the administration of a new province, and that it was attended with many advantages so long as it was possible to maintain it. But it was almost inevitable, that, in the administration of an extensive province like the Panjáb, some division of labour should become necessary. The growth of population, the extension of agriculture, the development of trade, the steady increase of litigation, the introduction of a stricter system of law and procedure, and the increasing demands of the central administration upon local officers, have all added to the amount of work to be done, while the simplicity of system which enabled a single officer to control the administration of a district or division in all departments has disappeared as departments have been multiplied. It has therefore become necessary from time to time to increase the number of officers, and to arrange for the distribution of work between them. When the Board of Administration was dissolved, the Chief Commissioner was relieved of judicial functions by the appointment of a Judicial and a Financial Commissioner, of whom the former became the head of the Judicial Department. The duties

of the Judicial Commissioner, however, were by no means purely judicial. He had the control of important branches of the administration, such as the police and the public works of the province, and it was not until the Chief Court took the place of the Judicial Commissioner, early in 1866, that any Court, except a few Small Cause Courts, could be said to be presided over by officers exclusively engaged in the judicial administration.

"In 1875, the increasing pressure of work made it necessary, in order to give Deputy Commissioners and Tahsíldárs time for their other duties, to relieve them, in a large measure, of civil judicial work. This was done, under Act XIV of 1875, by the appointment of a number of special officers, known as Judicial Assistants and Munsifs, upon whom the powers of a Deputy Commissioner and of a Tahsíldár were respectively conferred, and these officers have been mainly, though not always exclusively, employed in the discharge of judicial functions. The Commissioner of Pesháwar has also been practically relieved of his judicial duties by the appointment of a Civil and Sessions Judge, and some other Commissioners have been partially relieved of judicial work by the appointment of two Additional Commissioners.

"It has now become necessary to make further provision for the judicial duties at present performed by Commissioners and Additional Commissioners and by the Civil and Sessions Judge of Pesháwár, and as the number of appeals to the Chief Court is annually increasing and has for several years been greatly in excess of what three Judges—the permanent strength of the Court—could dispose of, it has been thought advisable to reduce the number by giving greater finality to the decisions of Courts subordinate to the Chief Court. It is, therefore, now proposed to constitute seven Divisional Courts, consisting ordinarily of two Judges each, which will take the place of the Commissioners' Courts and of that of the Civil and Sessions Judge of Pesháwar, and at the same time to make considerable alterations in the law regarding the right of appeal in civil suits. The number of Judges sanctioned for these Divisional Courts being thirteen, it is proposed, in order to complete the seven Courts, to take power to appoint the Commissioner of a Division to be one of the Judges; but, unless where this is done, Commissioners will be relieved of the judicial duties now devolving upon them. It is, however, proposed to transfer certain classes of suits relating to land, which can be better disposed of by Revenue-officers than by purely judicial officers, from the Civil to the Revenue Courts, and in these cases Commissioners will still exercise appellate jurisdiction. There is no doubt that, in consequence of the proposed changes, the work of Commissioners will be greatly reduced, and this

renders possible a reduction in the number of Commissioners east of the Indus, as well as the abolition of the appointments of the Civil and Sessions Judge of Peshâwar and the Additional Commissioners.

"It is proposed to empower the Chief Court to make rules for the exercise of the powers of the Divisional Court by one of the Judges of that Court, subject to the proviso that no order other than an interlocutory order, and no decree, sentence or decision of any Court, should be reversed by any Judge sitting alone. The Chief Court at present possesses an analogous power to make rules for the exercise of its own powers by one or more of its Judges.

"The reason for proposing that these Courts should consist of two Judges was that it was considered that this would strengthen them for appellate purposes and allow of finality being given to their decisions passed in appeal. There is of course the drawback that more Judges will be required to do the same work; and this may make it more difficult to fill up the appointments properly at first. But the greater number of appointments of this class may induce more officers to prepare themselves to fill them; and, where two Judges concur in reversing or modifying the decision of a subordinate Court, there will be less reason for allowing a further appeal than where a single Judge of appeal has come to a different decision from that of the first Court on the same evidence.

"For the Court of the Deputy Commissioner, again, it is proposed to substitute the Court of the Assistant Judge, and to relieve Deputy Commissioners of their civil judicial functions, except in a few of the lightest districts, where the Deputy Commissioner may be empowered to act as Assistant Judge in addition to his other duties.

"It is provided that the new Divisional Court should be the District Court or principal Court of original civil jurisdiction within its division, power being reserved to Government to confer all or any of the powers of a District Court upon an Assistant Judge, in order to provide for the disposal of certain classes of cases which are only cognizable by a District Court.

"The jurisdiction of the Divisional Court and of the Assistant Judge in original civil suits will, like that of the Deputy Commissioner at present, be unlimited as respects the value or amount in litigation, and power is taken to give certain Subordinate Judges jurisdiction extending to Rs. 5,000, to take the place of the officers now exercising the full powers of an Assistant Commissioner, whose jurisdiction extends to Rs. 10,000. All other officers empowered to decide civil

suits, including the Munsifs, will be invested with the powers of a Subordinate Judge of the second, third or fourth class, that is, with powers to decide suits the amount or value of which extends to Rs. 1,000, Rs. 500 or Rs. 100, respectively.

"Power is also taken to invest Assistant Judges and Subordinate Judges with certain Small Cause Court jurisdiction, as may now be done in Bengal, the North-Western Provinces and Oudh, under the corresponding Acts applicable to those provinces.

"The changes made by the Bill in the appellate system are mainly directed to reducing the number of appeals at present allowed. The second appeal on a question of law or custom now allowed by the Civil Procedure Code in suits other than those which would be cognizable in a Small Cause Court, and the further appeal on the whole case, when an Appellate Court has reversed or modified the decree of a Court of original jurisdiction, which is permitted by sections 38 and 39 of the Panjáb Courts' Act of 1877, are both taken away, and the decisions of Appellate Courts are made final, except that the Judges of a Divisional Court are enabled, when they differ as to the judgment which should be passed on an appeal, or when some question of law or custom or general interest is involved, to grant a certificate permitting a further appeal to the Chief Court, if they think the case of sufficient importance to justify a further appeal. The abolition of second appeals takes away a great part of the appellate work for disposal by the Chief Court, while the abolition of further appeals, with the above exception, will greatly relieve the Divisional Courts.

"To admit of finality being given, as far as possible, to appellate decisions, appeals to Assistant Judges are confined to suits not above Rs. 500 in value, either of the Small Cause Court class, or of any other class which the Chief Court, with the sanction of the Local Government, may determine to put on the same footing for purposes of appeal; and appeals in suits above Rs. 5,000 in value, as well as appeals in any other suits decided by the Divisional Court, are declared to lie to the Chief Court, while all other appeals allowed by law will lie to the Divisional Court. A few first appeals now cognizable by Commissioners and all further appeals hereafter to be allowed will thus lie to the Chief Court, while appeals in some cases now cognizable by Deputy Commissioners will lie to the Divisional Court, which will be relieved of all further appeals and a few first appeals.

"It being proposed, as already mentioned, to transfer the jurisdiction in certain classes of suits relating to land to the Revenue Courts, a chapter has been

added to the Bill making these cases cognizable by the Revenue instead of by the Civil Courts, and containing other provisions rendered necessary by the transfer. Most of these classes are similar to those made cognizable by Revenue Courts by section 93 of the North-Western Provinces Rent Act, 1881; and, while appellate jurisdiction is not given, as in that Act, to the Civil Courts of appeal, but to the superior Revenue-authorities, thus entirely relieving the Civil Courts of a class of cases which Revenue-officers are likely to be in a better position to dispose of satisfactorily, the provisions of the Bill as to the powers of Revenue Courts and as to the cases in which first and further appeals should lie are in part based on the model furnished by that Act. This part of the Bill has undergone less discussion than the chapters relating to the Civil Courts, but it would be difficult to adapt the provisions of the Bill as to appeal in civil suits to the Revenue Courts, which will be differently constituted from the Civil Courts; and it is at the same time not desirable to continue the system of second appeals allowed by the Civil Procedure Code, or to allow further appeals to the same extent to which these are now permitted by the Panjáb Courts' Act. The provisions now proposed will restrict further appeals to a few of the more important classes of cases, the first appeal in which will lie to Commissioners and the further appeal to the Financial Commissioner.

"Power is taken for the Local Government, with the previous sanction of the Governor General in Council, to make rules regulating the procedure of the Revenue Courts in the cases thus transferred to their jurisdiction, it being at the same time provided that, until such rules are made, these Courts should be guided by certain parts of the Civil Procedure Code, and that the Financial Commissioner should be deemed to be the High Court within the meaning of that Code.

"As sanction has been given to the appointment of a second Financial Commissioner, provision is also made for the distribution of business between Financial Commissioners, and power is given to one Financial Commissioner to refer any question arising in an appeal pending before him to the other for his opinion thereupon.

"Owing to the greater finality given to appellate decisions by the provisions of this Bill, the revisional jurisdiction of the Chief Court under the Civil Procedure Code, sections 617 and 622, is certain to be more largely resorted to than hitherto, and some supplementary sections have, therefore, been

added to the Bill, interpreting certain expressions to be found in those sections, and increasing the fee leviable on an application to the Chief Court under section 622 for the exercise of its revisional jurisdiction, but empowering the Court to direct the refund of this fee when the application has been successful, if it thinks proper to do so.

"Other minor modifications of the law will be found to be sufficiently explained in the Statement of Objects and Reasons. The only one of these which need be mentioned now is that, in section 21, interlocutory orders are excepted from the proviso declaring that a single Judge of the Chief Court, in the exercise of his appellate jurisdiction, may not reverse the order of any Court; and the Chief Court is also enabled to provide by rule for the constitution of a full bench of the Court, and to delegate to one of its Judges the power of determining what Judges shall sit alone or as a bench of the Court. This is necessary, as, although the present Panjáb Courts' Act provides for the disposal of certain cases by a full bench, it contains no explanation of this expression, and a doubt has therefore arisen whether a full bench can be constituted when, from any cause, it is not possible for all the Judges for the time being appointed to the Court to be present. Thus, if a Judge is absent on leave and no successor has been appointed, as happened on two occasions last year, or if a Judge is from illness unable to attend Court, it is doubtful whether, under the present law, a full bench sitting can be held. To remove this difficulty, it is proposed that, when the Chief Court consists of more than three Judges, it may by rule declare what number of Judges, not being less than three, shall constitute a full bench and prescribe the mode of determining what Judges should sit together for the purpose.

"In the High Courts established by Royal Charter, the Chief Justice, under the Act of Parliament providing for the establishment of those Courts (24 & 25 Vic., c. 104, section 14) regulates the sittings of the Judges either alone or as division benches. In the Chief Court, there being no Chief Justice, and no such power being given to one of the Judges by the existing law, the power to regulate the sittings of the Judges resides in the Court as a whole; and, unless this power is conferred by law upon the senior Judge (who is declared to be the Chief Justice within the meaning of the Criminal Procedure Code), the Court should be authorized to delegate the power subject to any rules it may make for its exercise.

"I need only, in conclusion, refer to two other questions which have been discussed in connection with the subject of the present Bill, but with which it

does not deal. These are the amendment of the description of the cases cognizable by Small Cause Courts contained in section 6 of Act XI of 1865, and the mode of determining the value of a suit for purposes of jurisdiction, which is, in many cases, very different from its value for the purpose of levying a court-fee on its institution. These questions are as important in other parts of India as in the Panjáb, and can be more appropriately dealt with in connection with the amendment of the general law than in a local Bill; and the former of them, at least, will, it is understood, be taken up separately."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY also introduced the Bill.

The Hon'ble MR. BARKLEY then moved that the Bill and Statement of Objects and Reasons be published in the *Panjáb Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 9th July, 1884.

SIMLA;
The 1st July, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 225 L. D.—2-7-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 9th July, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

The Hon'ble J. Gibbs, C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble D. G. Barkley.

KHOJÁ SUCCESSION BILL, 1884.

The Hon'ble MR. ILBERT introduced the Bill to amend and define the law of Testamentary and Intestate Succession to Khojás, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs, Quinton, Barkley and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Bombay Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

PANJÁB COURTS' BILL, 1884.

The Hon'ble MR. BARKLEY moved that the Bill to amend the law relating to Courts in the Panjáb be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Ilbert, the Hon'ble Sir Steuart Bayley, the Hon'ble Mr. Quinton and the Mover, with instructions to report in two months.

The Motion was put and agreed to.

AGRICULTURISTS' LOANS BILL, 1884.

The Hon'ble SIR STEUART BAYLEY presented the Report of the Select Committee on the Bill to amend and provide for the extension of the Northern India Takkáví Act, 1879.

The Council adjourned to Wednesday, the 23rd July, 1884.

SIMLA;
The 10th July, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 271 L. D.—11-7-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 23rd July, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

AGRICULTURISTS' LOANS BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Report of the Select Committee on the Bill to amend and provide for the extension of the Northern India Takkáví Act, 1879, be taken into consideration. He said:—

"When I obtained permission in January last to introduce this Bill, I explained that the objects which we had in view were, first, to remedy an omission in the original Act under which the process for recovering an original loan did not extend to the recovery of costs and interest; secondly, to enable the Bill to be extended to other provinces at the option of Local Governments; and, thirdly, to provide for loans being made to village-communities or associated agriculturists, and to facilitate their settling among themselves the shares in which such loans should be recovered. The Report of the Select Committee shows what alterations have been made in the first draft of the Bill in addition to securing these three objects, and the alterations are all very small ones.

"We have made the Bill of its own vigour applicable to Bombay, and have at the same time repealed two sections of the local Act, XV of 1880,

which cover very much the same ground as our own Bill. This we have done at the request of the Bombay Government and its legal advisers. We have also endeavoured to meet a suggestion of one of the Hon'ble Judges of the Madras High Court that costs incurred in the process of recovery should be recovered in a single procedure, together with the interest and cost of the loan. We have also made a minor alteration in section 6 of the Bill providing that joint applicants should be at liberty to sign or mark the distribution-paper either themselves or by an authorised agent.

"These are the alterations which have been made in the Bill; but we have received some other suggestions and criticisms which I think call for a brief notice to explain why we have not been able to adopt them. First came from British Burma a suggestion that the Bill should be extended so as to include loans to fishermen, and from the Panjáb the suggestion that the Bill should be made to cover loans to distressed artisans and others. We have not seen our way to accepting either of these suggestions, and for the same reason, namely, that the scope of the Bill is different in regard to its objects. The object of the law is to enable Government to lend money on easy terms, and to recover, by a summary process, loans made for specific purposes—either for the relief of distress or for the purchase of seed and cattle—to specific people, namely, the owners and occupiers of arable land. The general policy of encouraging frequent resort to such loans has not been uncontested on economical grounds and as tending to pauperization, and it may be admitted that they should be made somewhat sparingly and in exceptional cases; but the real justification of the policy itself seems to me to be the position of Government as the great landlord of the country, and the direct bearing which the welfare of the cultivator has on its revenues. This argument would not apply with the same force to other industries, and there is no justification for Government, as part of its ordinary revenue-procedure, making loans to fishermen which would not equally apply to weavers, spinners, miners or silversmiths, who none of them stand in the same direct relations to Government as do the great bulk of the agricultural population of the country. We have therefore, after full consideration, rejected this proposal as beyond the scope of the Bill and outside the special circumstances which justify it. Nor have we been able to accept a suggestion put forward by the Ajmer authorities that Government might authorise loans being made for the purposes of this Bill by private persons, and recover them as arrears of revenue. A similar proposal, when it was introduced into the Bill relating to loans for agricultural improvements, was not accepted by the Secretary of State; and while the principle which is really at issue in connection with the scheme for

agricultural banks is still under the consideration of the Secretary of State, I think it would be premature to introduce it into a measure of the kind now under consideration.

"There was a further suggestion from the Government of the Panjáb—that the distribution-paper—that is, the paper which shows the shares in which the joint loans are to be recovered from the borrowers—should be signed by the *lambarddr*, or headman, for the whole village instead of requiring the signature of each recipient. This was proposed as a matter of administrative convenience, and it had something to be said for it; but the majority of the Committee thought that it would be dangerous to accept a paper so signed as evidence as to the responsibility of each individual, especially as the distribution-paper is to be conclusive evidence in Court. If it is not made conclusive evidence, the paper will be of very little value; and it seemed to us that all we could do was to provide that the borrower should be at liberty to affix his mark to the distribution-paper by an agent instead of personally. Nor on consideration, is the necessity for the lambardár's interference very apparent; the Bill does not deal with large loans for improvements in which a whole village may very probably be interested, but with small loans for seed and cattle, which are for the most part matters of individual concern. Doubtless, on some occasions, as in the case of famine, it might be desirable to administer loans for the relief of distress through the village-organization collectively, but we think that what we have proposed will go far to meet the difficulties of the case; and, even if it does not, it is better to accept the inconvenience involved than to adopt a dangerous precedent which is contrary to the usual practice and theory of legal documents in India. I may mention here that this section has been introduced specially with a view to the coparcenary villages of the Panjáb, and it is not anticipated that, save to meet exceptional cases, it will be found applicable elsewhere than in Northern India.

"We have also received some criticisms from the British Indian Association. They object to the Bill being made applicable to Bengal, and say that if the Bill is made so applicable the rayyats will not use it and that no one will apply for loans. We do not apply the Bill *proprio vigore* to Bengal; we merely say that the Local Government may extend it by notification to Bengal if it please, and the Local Government say that in cases of severe distress it will be necessary to have some such law. The British Indian Association are evidently under a misapprehension on this subject, for, in reference to the famine of 1874, they assume that the loans have been recovered with ease and without

recourse to much litigation; but, as a matter of fact, the Bengal legislature were obliged, in 1875, to pass a special law, *pro hac vice*, for the recovery of advances made in the previous year; and the procedure adopted was in fact the same as this—to make them recoverable under the Certificate Act, VII (B. C.) of 1868. Of course this procedure might be repeated on each occasion and a fresh law passed, but it seems to me to be a much simpler process to have the law laid down once for all. Of course, if no one applies for a loan, no harm is done. But, although they take that objection, they go on to take another not quite consistent with it. The British Indian Association seem to be under great dread that in some way the grant of loans to tenants may prejudice the landlords, and they ask if it is intended that the lands of the owners should be liable to sale for the debts of the rayyats. I do not quite understand how such a misapprehension can possibly have arisen,—probably from omission to examine closely the meaning of the words 'recovered as arrears of land-revenue,'—but clearly nothing but the tenant's own property or his surety's can be proceeded against. What will actually happen will be this. The law for the recovery of arrears of land-revenue in Bengal is contained in Act VII (B. C.) of 1880—called the Public Demands Act. Under that Act, the Collector, when the arrear is due, and after enquiry, issues a certificate which may within a year be contested in the Civil Court. That certificate has the force of a decree of the Civil Court and will be executed against either the moveable or immoveable property of the debtor, and, as such, it will prejudice the landlord's claims neither more nor less than any other decree of Court.

"This I think disposes of the more important objections in the letter from the Hon'ble Kristodás Pál, the Secretary of the Association; and I may perhaps be allowed to take this opportunity of expressing the regret with which we have heard of our colleague's severe illness, and how glad we are to learn that he is now out of danger. For myself I agree with him in thinking that the Bill is less applicable to Bengal than to any other province in India, and under ordinary circumstances I should not like to see it frequently applied to Bengal; but cases may occur in which the Government may have to take upon itself the duty of relieving distress by making loans for the recovery of which it is necessary to have some procedure, and I think we may safely leave it to the discretion of the Local Government to extend the Act or not as it thinks necessary."

The Motion was put and agreed to.

1884.] [*Sir Steuart Bayley ; Mr. Ilbert.*]

The Hon'ble SIR STEUART BAYLEY also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

SETTLEMENT-OFFICERS' (PANJÁB) DECISIONS VALIDATION.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill for the validation of decisions passed on appeal by certain Settlement-officers in the Panjáb.

The Council adjourned to Wednesday, the 30th July, 1884.

SIMLA;
The 25th July, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 304 L. D.—25-7-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 6th August, 1881.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

THE HON'BLE KRISTODÁS PÁL, RAI BAHADUR.

On the Members of Council taking their seats, His Excellency THE PRESIDENT made the following remarks:—"Before we proceed to consider the business upon the List before us, I am sure that my hon'ble colleagues will allow me to express my deep regret at the lamented death of Rai Bahadur Kristodás Pál, which has taken place since the last meeting of the Legislative Council. By this melancholy event we have lost from amongst us a colleague of distinguished ability, from whom we had on all occasions received assistance, of which I readily acknowledge the value. He has been taken from us in the prime of life, when his powers were at their best, and when we might have hoped that he would still for many years to come have been permitted to devote himself to the service of his country with the same energy and patriotism as had hitherto marked his career. Mr. Kristodás Pál owed the honourable position to which he had attained to his own exertions. His intellectual endowments were of a high order; his rhetorical gifts were acknowledged by all who heard him, and were enhanced when addressing this Council by his thorough mastery over the English language.

He will long live in the remembrance of his countrymen; and it is with feelings of sincere sorrow that I pay this last tribute to the memory of one who was so well entitled to be regarded as a worthy representative of the intellect and eloquence of the race to which he belonged."

SETTLEMENT-OFFICERS' (PANJÁB) DECISIONS VALIDATION BILL.

The Hon'ble MR. ILBERT moved that the Bill for the validation of decisions passed by certain Settlement-officers in the Panjáb be referred back to the Select Committee. He said:—"The object of this Motion is merely to give the Select Committee an opportunity of considering some formal alterations which have been suggested to me since the date of their Report, which would, I think, effect an improvement in the form of the Bill, and which could not be very conveniently made by amendments moved in Council."

The Motion was put and agreed to.

INDIAN TELEGRAPH ACT, 1876, AMENDMENT BILL.

The Hon'ble MR. HOPE moved for leave to introduce a Bill to facilitate the construction of Telegraphs, and to amend the Indian Telegraph Act, 1876. He said:—

"The main object of this Bill is to empower the Governor General in Council, or any company or person licensed by him under the Indian Telegraph Act of 1876, to place and maintain lines of telegraph under, over, along, across, in or upon property belonging either to private persons or public bodies. The determination to bring forward this Bill has arisen out of the fact that it has recently come to the attention of Government that, as the law at present stands, the Governor General in Council and his licensees have no power to place and maintain lines of telegraph upon the land of municipal or other similar bodies or of private persons. In England the requisite powers have been conferred on the Post Master General, who works and maintains the telegraphs in that country, and it appears to us to be necessary that similar powers should be enjoyed here. The power given in the Bill will operate to prevent, on the one hand, any Government officer from violating private rights when erecting the telegraphs, and, on the other hand, any private person from offering unnecessary and unreasonable obstruction to those who are carrying out operations intended for the public convenience.

"The present opportunity has also been taken to make two amendments in the Indian Telegraph Act, which were found from experience to be necessary,

"The first of these amendments has for its object the regulation of telegraph lines constructed by the Government, but leased to companies or individuals by whom they are worked. We have a very large and increasing class of such lines along our railways, the system being that the Government owns the whole of the plant of the telegraphs, and that it leases them to the Railway-administrations for the actual working. The position of these lines under the present Telegraph Act is far from clear, and the object of the amendment proposed in section 8 of the Bill is to put them on much the same footing as licensed lines.

"The object of the second amendment, made by section 9 of the Bill, is to prescribe penalties for the breach by licensees or lessees of the rules made under section 8 for the conduct of their telegraph. In such cases, as the Act now stands, the only remedy is to revoke the license or lease; but this course would in most cases cause such great public inconvenience that it is impracticable."

The Motion was put and agreed to.

FUNCTIONS (LIEUT.-GOVERNOR, N. W. P.) VALIDATION BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to legalise the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council. He said:—"The object of this Bill is merely to legalise the existing practice in accordance with which certain functions which under some unrepealed Regulations and Acts ought strictly to be discharged by the Governor General in Council are in fact discharged, and much more conveniently discharged, by the Lieutenant-Governor of the North-Western Provinces. The functions in question are not of a very important character, one of them, for instance, being the power to sanction the allowances and establishment of the dároghas of certain stone-quarries, and to fix the rate of duty payable in respect of stone taken from the quarries. That is a power which, I think, might be very conveniently delegated to the Local Government."

The Motion was put and agreed to.

TRANSFER OF PROPERTY ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the Transfer of Property Act, 1882. He said:—

"The chief object of the Bill which I am asking leave to introduce is to remove a doubt which has been entertained as to the effect of the exemption

clause in the Transfer of Property Act. When this important measure was before the Select Committee, it was apprehended that there were certain classes of the community to which some of its provisions might be unsuitable, and accordingly a power was given to Local Governments, with the previous sanction of the Governor General in Council, to make exemptions from the operation of particular sections of the Act.

"The sections to which the power of exemption applies are those which relate to transfer by an ostensible owner (section 41); to the mode of effecting a transfer of property by sale (section 54, paragraphs 2 and 3), mortgage (section 59), lease (section 107), and gift (section 123); and to the effect of a power of sale in a mortgage (section 69). And the form of exemption adopted was copied, with some modifications, from the Indian Succession Act, which enables (section 332) the Government to exempt from the operation of the whole or any part of the Act, either prospectively or retrospectively, the members of any race, sect or tribe in British India to whom the provisions of the Act might be considered inapplicable.

"Now, this was an excellent precedent to follow; but I cannot help thinking that the Select Committee, when adopting it, did not sufficiently advert to the difference between the rules of the Succession Act and those of the rules of the Transfer of Property Act to which the power of exemption was to apply. It is easy enough to make a personal exemption from the rules of succession, and to say that some of those rules shall not apply in the case of succession to a particular person or class of persons. But it is not so easy to make a personal exemption from rules which require the observance of certain formalities in the case of a sale, mortgage, lease or gift of land. According to the generally recognised principles of what is called private international law, formalities of this kind are regulated by the law of the place where the property is situate, and are not affected by the personal law of any party to the transaction. What, for instance, would be the effect of saying that a rule which requires the sale of land to be made only by a registered instrument shall not apply to Bhíls? Would it apply where the vendor is a Bhíl, or where the purchaser is a Bhíl, or where any party to the transaction is a Bhíl, or only when all parties to the transaction are Bhils? So, again, is it only intended to apply where litigation ensues; and in that case is the intention to exempt the person who wishes to enforce the contract, or the person against whom the contract is to be enforced, or both? Plausible reasons may be suggested, and indeed have been suggested in the papers which have come before me, for adopting any one of these views; but I do not think any lawyer could say with complete confidence which of them would be the correct view.

1884.] [*Mr. Ilbert.*]

"The difficulty of construing this section was raised very shortly after the Act came into operation by Mr. Elliott, the Chief Commissioner of Assam, who was anxious to exempt from some of the provisions of the Act certain classes of the population under his government, and more especially the wild tribes on the eastern frontier of Assam, but who was not at all sure what would be the effect of his exercising the power of exemption given to him by section 1 of the Act.

"When the question came before me my own opinion was that the best way out of the difficulty would be to make the power of exemption local and not personal, so far at least as it applies to the sections which prescribe the formalities of transfer. Mr. Elliott, however, would have preferred a power to exempt from the operation of those sections not persons or places, but *transactions* to which members of any race, sect, tribe or class whom it might be desirable to exempt were parties; and as to sections 41 and 69 (which relate to sales by ostensible vendors, and to powers of sale in mortgages), he did not see why the power of exemption was needed in their case at all.

"I felt bound to admit that a local exemption would not give precise effect to the intentions of the Select Committee, and I shared Mr. Elliott's doubts as to the reasons for including sections 41 and 69 in the exemption clause. And under these circumstances, considering that the Act had so recently come into operation, and that I had not had the advantage of taking part in any of the deliberations which preceded its passing, I thought it was only due to the eminent persons by whom it was framed, and to the Select Committee who had bestowed so much pains on bringing it into its present shape, to take the opinion of Local Governments before proposing any specific amendment in the law.

"The result of the reference to Local Governments has been to elicit a great difference of opinion as to the form which the exemption clause should assume, whether it should be purely local or purely personal, or partly local and partly personal; and further, if it is made personal, whether it should apply where any of the parties to the transaction is a member of the exempted class, or only where all of them belong to that class. But the general effect of this conflict of opinions on my mind is to confirm the view which I had previously entertained, that the best and simplest way out of the difficulty is to make the exemption from the provisions as to formalities of transfer local, and that any other form of exemption would not only give rise to difficult legal questions, but would facilitate forms of fraud which it is the object of the Act to make impossible, or at least difficult.

"In the view that there should be some kind of local exemption, I think I may claim the support of Sir Charles Turner, whose opinion, as that of one of the three Law Commissioners to whom the Transfer of Property Bill was referred, is entitled to great weight, and I am certainly supported by Mr. Justice Muthusami Aiyar, who has written an interesting Minute on the subject, and by Mr. Robert Crosthwaite, who was acting as Secretary in the Legislative Department when the Bill was before the Select Committee, and who may therefore be presumed to be acquainted with the reasons which induced them to insert the exemption clause now in the Act.

"As to the extent of the local exemption, one point appears to be clear, namely, that the sections prescribing the formalities of transfer should not extend to tracts of country in which the Registration Act is not in force. The sections in question presuppose the existence of a Registration Law, and are scarcely intelligible without it; and it can, I think, only have been through an oversight that they were extended to areas where that Act is not in operation.

"Should we go further, and exempt from the operation of those sections any part of the country where the Registration Act is in force? Sir Charles Turner appears to doubt whether we should, and suggests, as an alternative, that the kind of protection now afforded to certain classes of agriculturists under the Dekkhan Relief Acts should be extended to other classes of persons, by making them incompetent to convey any interest in land by a written instrument unless the instrument is executed in the presence of an officer of Government, who should be required to explain its effect. In other words, instead of relaxing formalities in the case of these classes, he would require the observance of additional formalities. With all deference to his high authority, I think the balance of argument is against the adoption of this suggestion. In the first place, any attempt to superadd a personal to a local exemption is open to the objections which have been urged against granting purely personal exemptions. In the next place, although I do not deny that members of uncivilized and ignorant classes are exposed to risk of fraud when they engage in transactions with persons of superior intelligence, though perhaps not of superior morality, yet there does not appear to be anything which shows that this particular risk was in the view of the Select Committee when they framed the exemption clause now under consideration. There may be, in my opinion there are, cases in which a contract should not be legally binding, unless it is executed under sufficient safeguards against fraud. The English Legislature has recognised this principle

in its legislation on the subject of bills of sale (to select one out of many instances), and English Courts of Equity constantly act on it where such relations exist between the parties as afford ground for the presumption of undue influence having been exercised. But such cases, as the illustrations which I have referred to clearly show, are not confined to transactions relating to land, or to transactions to which one of the parties is a member of an uncivilized race; and on the whole I think it is best to deal with them, not in the manner suggested, but by special legislation, where the need for such legislation is shown to exist.

"On the other hand, I think that it would be convenient to have a power of exempting from the operation of some of the provisions of the Act certain tracts to which the Registration Law extends. For instance, Sir Henry Ramsay has strongly pressed upon me the expediency of exempting Kumaun, where I believe the Registration Act is in force. I am quite aware that the Transfer of Property Act is not the only Act of the Legislature which Sir Henry Ramsay has desired to exclude from Kumaun, and I fully understand the jealousy with which legislation of the kind is regarded by a man whose long and eminently successful administration affords one of the most conspicuous instances of what may be done in a backward district by a strong, conscientious and capable ruler when left very much to his own devices and untrammelled by laws and regulations. But without committing myself to Sir Henry Ramsay's views on legislation generally, it does seem to me probable that there are tracts of country where the mass of the population are not ripe for those provisions of the Transfer of Property Act which require all transfers of property above a certain value to be in writing and registered, and which in the case of petty transactions make writing obligatory unless the transfer is accompanied by delivery; and this appears to be the opinion of the Government of the North-Western Provinces, who desire to have the power of exempting certain tracts of country within the area under their administration, including, I believe, not only Kumaun, but certain other hill tracts. The amending Bill proceeds on the view that such a power is advisable, and proposes to give a power to grant local exemptions from those sections which prescribe the formalities of transfer.

"The power will doubtless be cautiously exercised, and I should point out that it may be so exercised as to exclude certain portions from the exempted area. For instance, provisions which may be considered unsuitable to Kumaun generally, may be suitable enough to Naini Tál.

"This is all that I need say at present about sections 54, 59, 107 and 123, the sections which prescribe the formalities to be observed in cases of sale, mortgage, lease and gift.

"To sections 41 and 69 different considerations apply. Section 41 enacts that a transfer of property by its ostensible owner shall not be void by reason only that the transferor was not authorized to make it, provided that the transferee after taking reasonable care to ascertain that the transferor had due powers has acted in good faith.

"This section is based on the principle that where one of two innocent persons must suffer from the fraud of a third party, the loss should fall on him who has created or could have prevented the opportunity for the fraud, and that in such cases hardship is caused by the strict enforcement of the general rule that no one can confer a higher right on property than he himself possesses. This principle is generally recognized in the jurisprudence of all civilized nations, and lies at the bottom of such legislation as the English Factors Act; but I am inclined to agree with Sir Charles Turner in thinking that it involves a refinement of equity which is perhaps hardly required for, or suitable to, the very simple transactions between members of uncivilized races, and which they might fail to appreciate. Accordingly I propose to give power to exempt from the operation of this section any property within a particular area in which a member of any specified race, sect, class or tribe is interested. As the section deals not with the formalities of transfer, but with the capacity to transfer, the objections to a form of exemption which is to some extent personal do not apply.

"As to section 69, there does not seem to be any reason why it should be included in the general exemption clause; but, on the other hand, it does seem to require amendment in itself.

"The object of the section was to set at rest what had been previously a moot question, namely, whether, under the law of British India, a mortgagee could sell under an express power of sale without the intervention of the Courts. The section says that such a power of sale shall be valid in certain cases, namely,—

(*a*) where the mortgage is an English mortgage (*i.e.*, in the ordinary English form), and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist;

(*b*) where the mortgagee is the Secretary of State in Council;

(*c*) where the mortgaged property or any part of it is situate within the town of Calcutta, Madras, Bombay, Karáchí or Rangoon:

but it does not go on to say that the power shall not be valid in other cases.

"I propose to make clear what seems on the whole to have been the intentions of the framers of the section by declaring the cases in which the power of sale is not to be valid. And as Mr. Justice Muthusami Aiyar has pointed out that there are other classes which it is even more necessary to exclude from the operation of the exceptional provision than Hindus, Muhammadans and Buddhists, I propose to add words giving a power to exclude such classes.

"These are the principal amendments which I propose to make in the Act. There is however one further amendment, which, though of minor importance in itself, opens up questions that are of considerable importance.

"There is a section in the Act which declares that nothing in the Act is to be deemed to affect the provisions of any enactment not thereby expressly repealed. And Mr. Elliott asked how this declaration was to be reconciled with certain sections which appeared to him to affect the provisions of the Registration Act. Under the Registration Act certain instruments relating to property of less than Rs. 100 in value *may* be registered, and, if registered, have priority over unregistered instruments. Under section 54 of the Transfer of Property Act all instruments of sale *must* be registered to have any effect at all. Where the value of the property is less than Rs. 100, you may sell by mere delivery; but if you wish to rely on a written instrument, you must register it; and the question is whether the latter of these provisions does not affect the former. The answer depends on the meaning which you attach to the term 'affect.' As used in legislative language, it usually means affect *in malam partem*, derogate from, wholly or in part. In this sense the Transfer of Property Act does not affect the Registration Act. What it really does is to supplement it by rendering certain instruments compulsorily registrable which were only optionally registrable before. And I propose to insert in the amending Bill words which will make this clear.

"Now this is, as I have said, a minor matter, but it raises the question as to the relations to each other of these two important Acts, and as to the extent to which the passing of the Transfer of Property Act has superseded the necessity for making some of the amendments which have from time to time been suggested in the Registration Act.

"The Registration Act is an Act which has been frequently tinkered, and which from the nature of the case it is almost impossible to make thoroughly satisfactory, and therefore I am not particularly anxious to undertake the task of further amending it. But I fear that it will be necessary before long to take action on the suggestions for its amendment which have for some time been pressed on the Legislative Department, and the close connection of some of those suggestions with the parts of the Transfer of Property Act which I am proposing to amend will, I think, afford a sufficient justification for my referring to them briefly now.

"One of the proposals which has been laid before us is pretty radical in its character, for it goes to the root of the matter, and suggests that our whole system of registration is wrong, and that what we ought to aim at is a registration, not of instruments or documents, but of titles. Now this question of registration of instruments or assurances *versus* registration of titles has been the subject of controversy in England among those learned in the conveyancing craft during the last half century or so. On the one hand, a system of registering assurances has been in force in two counties in England—Middlesex and Yorkshire—ever since the reign of Queen Anne, and has also been in force for a long while in Ireland and Scotland, and has worked with more or less success. In Middlesex, I can undertake to say that it has worked very badly. On the other hand, Sir Robert Torrens has introduced into the Australian colonies a system of registering titles which appears to have been a conspicuous success, and which has therefore naturally suggested the expediency of its introduction elsewhere. Both Lord Westbury and Lord Cairns have passed Acts providing for registration of titles somewhat on the Torrens' system; but both these Acts, though framed with great ability, have, I am sorry to say, remained almost dead-letters. It has been suggested that in India a system of registering of titles might be conveniently engrafted on the system of revenue registration, which looks rather to the man in possession than to the way in which he got into possession, and that we should thus avoid a double system of registration under the Revenue Acts and under the Registration Acts.* My own opinion, however, for what it is worth, is that, though registration of titles is preferable in theory to registration of assurances, it is not compatible with a complicated system of titles. It is mainly for this reason that I believe it has failed in England, where titles are complicated by settlements, and I fear that it would fail in India, where there are even greater complications arising out of Hindu family law.

* This suggestion has the support of Mr. Justice Field. See "Landholding and the Relations of Landlord and Tenant," p. 405, note 9.

1884.] [*Mr. Ilbert.*]

"Our present system of registering instruments has obtained firm possession of the field, has on the whole worked fairly well, and is recognized as the basis of such important pieces of legislation as the Transfer of Property Act; and under these circumstances it would be a strong measure to upset it altogether. Whether an economy may not be effected by combining the functions of the staff employed under the Revenue Acts and of that employed under the Registration Acts is an administrative question into which I need not enter.

"Assuming then that instruments and not titles are to be registered, there is a feature of the existing Registration Act to which strong exception has been frequently taken by high authorities, and that is what is known as optional registration, the system, namely, under which instruments of a certain class are allowed, but not required to be registered, are given a legal effect without registration, but, if left unregistered, are liable to be overridden by a registered instrument of later date. Sir Richard Garth has repeatedly inveighed against the system as inducing and facilitating fraud, and a high authority on the other side of the peninsula has recently used equally strong expressions about it. 'The present law,' says Mr. Maxwell Melvill in a note which I read the other day, and which I hope he will excuse me for quoting in this connexion, though it was written with reference to a different subject 'which makes the registration of certain instruments optional, but invalidates them when they come into competition with registered instruments of a later date, is a trap for the unwary, and has unfairly deprived thousands of innocent mortgagees and private owners of their property.'

"Among the numerous difficult questions to which the system of optional registration has given rise, one of the most difficult is as to the effect of notice of an unregistered transaction on the rights of a person who claims under a registered instrument. There is a section of the Registration Act (section 50) which says that when a deed of which the registration is optional is registered, it shall have priority over any unregistered deed relating to the same property. This is in fact the inducement to register such deeds. But supposing that a man who claims under a deed so registered had, at the time of entering into the transaction on which the deed is based, notice of the existence of another unregistered deed, earlier in date, and inconsistent with his claims, what then? Is he still to have priority, notwithstanding the notice? On this question there is a vast number of decisions, which are collected in the various editions of the Registration Act (the edition which I happen to have consulted is a handy little book brought out this year by Mr. Cuddalore Ramachandra

Aiyar, a Subordinate Judge in North Malabar), but the upshot of them is that the Madras High Court would allow the claimant under the later registered deed to assert his priority, notwithstanding notice, whilst the other High Courts, and I believe the Chief Court of the Panjáb, hold the opposite view. I have had some correspondence on this subject with Sir Charles Turner, and he has been kind enough to send me a note, in which he has reviewed the history of the successive Registration Acts, and has defended with much force the view taken by the Madras High Court as to the operation of the present Act. I quite agree with him that if the doctrine of notice is carried to the extravagant lengths to which it was formerly carried by English Courts of Equity, and under which what was called constructive notice was made to include, not only what a man actually knows, but what he and various other persons connected with him could, should, or might have known,—I quite agree that if the doctrine is carried to this length, it is fatal to any system of registration. But a much more reasonable view of what amounts to notice has been taken of late years by the English Courts, and notably by Lord Cairns in a well known case in the House of Lords (*Agra Bank* v. *Barry*). It is certainly desirable, as Sir C. Turner admits, that the law administered in the several provinces should be made uniform by legislation, and that it should be expressly declared whether the doctrine of notice is to be applied by the Courts, and if so, to what extent. It may be found possible so to define the term for the purpose of the Registration Act as to get rid of what is called constructive notice, and to confine the doctrine to cases where there is such a knowledge of a previous transaction as shows that the person claiming under a subsequent registered deed is obviously trying to take advantage of his own fraud; but the work of framing a definition which would draw the line precisely at the right point would be a matter of considerable difficulty.

"In the meantime it should be borne in mind that we have already in our Statute Book a definition of notice and a declaration of its legal effects. The definition section of the Indian Trusts Act (section 3) explains that a person is said to have 'notice' of a fact when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to, or obtained by, his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229. And the Act goes on to enact (section 91) that—

'Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.'

1884.] [*Mr. Ilbert.*]

"I am not aware whether the effect of this section on the Registration Act has been fully considered; but it certainly cannot be left out of account in any legislation which may be necessary—and I fear legislation will be necessary—to reconcile the conflicting decisions of the High Courts.

"Of course if you could get rid of optional registration altogether, many of the difficulties to which I have referred would vanish. And I understand Sir Richard Garth* to be of opinion that, so far as transfers by sale are concerned, the evils arising out of optional registration have been removed for the future in those parts of India to which the Transfer of Property Act already extends, and are capable of being removed by a simple extension of that Act to other provinces, such as Bombay, to which the Act may be extended by the Local Government. For, under section 54 of the Transfer of Property Act, there is no such thing now as a transfer by writing of immoveable property unless that writing is registered. There may be an oral transfer by way of sale of a possessory interest under Rs. 100 in value, but any sale in writing, whether under or over Rs. 100, must be registered. However, leases and mortgages stand on a different footing, and as to them the law of optional registration still prevails.

"The remedy which is usually suggested is to extend the range of compulsory registration to instruments relating to property of less than Rs. 100 in value. The chief objection to this proposal appears to be that the obligation to register petty transactions would impose great expense and hardship in cases where a registry office is not available within a reasonable distance. There may be—I dare say there are—parts of the country to which this objection would not apply, and the suggestion which I should be disposed to make is that the Registration Act should be amended in such a way as would empower Local Governments to make registration of small transactions relating to land compulsory in those areas in which, in their opinion, the people are prepared for general registration and there is machinery available for registering such transactions without unnecessary expense and inconvenience to those concerned. In this way the range of compulsory registration might be carried out in a gradual and experimental manner. Of course the registration fees charged on petty transactions would have to be very light.

"And it is worth considering whether, in the class of cases to which compulsory registration is considered inapplicable, we should allow an unregistered instrument to have any legal effect whatever, whether in fact we should not

* See his remarks in *Narain Chunder Chuckerbutty* v. *Dataram Roy*, I. L. R. 8 Cal., at p. 612.

extend and generalize the principle which I understand to be embodied in section 54 of the Transfer of Property Act.

"These points will have to be fully worked out when the Registration Act comes up for amendment; but I suggest them for consideration now, because of their close and obvious connexion with the enactment which I am asking the leave of the Council to amend."

The Motion was put and agreed to.

PANJÁB MUNICIPAL BILL.

The Hon'ble MR. BARKLEY presented the Report of the Select Committee on the Bill to make better provision for the organization and Administration of Municipalities in the Panjáb.

The Council adjourned to Wednesday, the 20th August, 1884.

SIMLA;
The 8th August, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 361 L. D.—11-8-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 20th August, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

SETTLEMENT-OFFICERS' (PANJÁB) DECISIONS VALIDATION BILL.

The Hon'ble MR. ILBERT presented the further Report of the Select Committee on the Bill for the validation of decisions passed by certain Settlement-officers in the Panjáb.

FUNCTIONS (LIEUT.-GOVERNOR, N. W. P.) VALIDATION BILL.

The Hon'ble MR. ILBERT also introduced the Bill to legalise the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Quinton and the Mover, with instructions to report in six weeks.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

TRANSFER OF PROPERTY ACT, 1882, AMENDMENT BILL

The Hon'ble MR. ILBERT also introduced the Bill to amend the Transfer of Property Act, 1882, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Barkley and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

PANJÁB MUNICIPALITIES BILL.

The Hon'ble MR. BARKLEY moved that the Report of the Select Committee on the Bill to make better provision for the organization and administration of Municipalities in the Panjáb be taken into consideration. He said :—

"When this Bill was introduced last year, I explained that it was required not so much to facilitate the development of local self-government in the towns of the Panjáb, the most important of which have possessed it in some measure since 1862, as to remove doubts as to the extent of the powers of municipal bodies which have arisen from the imperfections of the law under which they are at present constituted, and which have placed the committees in the unenviable position of not knowing accurately what they were legally competent to do, and have thus hampered their action in some cases in which, in the interests of the public, it would have been desirable to leave them greater scope. These defects were probably unavoidable when the existing law was passed, as there had not then been sufficient time to gain experience of the working of municipal institutions in the Panjáb to admit of the framing of anything approaching a complete Municipal Code, and much had therefore to be left to bye-laws to be made by the committees themselves, which can now be more satisfactorily provided for by substantive enactment.

1884.] [*Mr. Barkley.*]

"At the same time, as it was thought desirable to give municipal committees a more representative character and greater powers of initiative than they had hitherto possessed, the Bill dealt in greater detail than the existing law with the constitution of municipal bodies, and it also became necessary to state more fully the powers of control necessarily reserved to Government and its officers.

"Before proceeding to notice the principal changes which have been made in the Bill by the Select Committee, it may be convenient to attempt to give some idea of the number and size of the communities which at present have municipal institutions, and of the amount of the revenue which the municipalities have to administer. According to the census of 1881, the urban population of the province was upwards of 2,400,000, or more than one-eighth of the whole population, and inhabited 238 towns. The municipalities, however, were less numerous, as several cantonments and civil stations not included within municipal limits were classed as towns, and all places with a population of 5,000 or more inhabiting a compact group of houses were similarly classed, while many such places in the Panjáb are simply large agricultural villages with little or no non-agricultural population, except the persons occupied in supplying the ordinary wants of the residents of the village.

"When the census was taken, the number of municipalities in existence was 195, with a total population exceeding 2,000,000, though only 102 had a population exceeding 5,000. The latest returns, which are those for the year ending 31st March, 1883, give a total of 202 municipalities, with a population exceeding 2,100,000 and an income of about 28¼ lákhs of rupees. Ten years before there were only 125, with an income of 16¾ lákhs. More than one-ninth of the population of the province reside within municipal limits.

"Of the 202 municipalities in existence, only 46 have a population over 10,000. These have a total population of 1,374,658, with an income exceeding 22,82,000 rupees. Of these, again, only 12 have a population over 25,000, their total population being 835,555, and their income exceeding Rs. 15,69,000. Three of these are cities with a population varying from 130,000 to 173,000 and a total income of Rs. 9,69,000, or more than one-third of the entire municipal income of the province. These are the two imperial cities of Delhi and

'Lahore of Great Mogul,'

and Amritsar, the sacred city of the Sikhs, and the centre of the confederation known as the Khálsa, which, before Ranjít Singh reduced the country north-west of the Sutlej under the rule of one sovereign, was the sole bond of union of the Sikh people. Of these, Delhi is surpassed in size by but three inland cities in India, Haidarábád of the Dakhan, Lucknow and Benares, and it is probably surpassed in trade by none; its commerce, including both exports and imports, being, according to the latest returns, over seven crores of rupees. Lahore resumed its place as the provincial capital under Ranjít Singh in 1798, and it continues to hold that place under our own Government. Amritsar, in addition to its religious importance in the eyes of the Sikhs, is, as a place of trade, second only to Delhi, and has large manufactures, especially in shawl wool, silk goods and embroidery. Besides these three cities, only three other municipalities in the province have an income exceeding one lákh of rupees. These are Pesháwar and Multán, both places of extensive trade, and Simla, in which this Council is now meeting. If we add the income of these three municipalities to that of the three great cities, we will find that six municipalities, with a population exceeding 616,000, have an income of over Rs. 14,19,000, which is more than half of the total municipal income of the province.

"It will thus be seen that, of the numerous municipalities now in existence, the great majority are in minor towns, and but a small number are in places of considerable importance. Eight, four of which are in the hills, are first class municipalities, and twenty are second class, the remainder belonging to the third class, which, as was stated when the Bill was introduced, it has not been thought necessary to continue; and the Local Government will therefore have to determine, with reference to each municipality of this class, whether it is fit to be constituted a municipality under the new law. The Select Committee has, therefore, thought it better, instead of repealing Act IV of 1873 and bringing the new law into force in all municipalities at once, and at the same time empowering the Local Government to withdraw any place from the operation of the Act, to require the Local Government, as soon as may be, to decide, as to each place where municipal institutions now exist, whether the provisions of the new Act are suited to that place, and, if they are, to declare it to be a municipality of the first or second class under the new Act. This is provided for by section 4, and, as section 171 empowers the Local Government to abolish any municipality, whether constituted under Act IV of 1873 or under the new Act, it will be able to put an end to any municipalities which it considers unfit to be brought under the new law. This change in

the form of the Bill has made it necessary to empower the Local Government to continue in office for a term the members of the present committees when the new law is applied to any place which is now a municipality; and, for the same reason, we have found it necessary to declare, by section 12, the consequences which will follow when the new law is applied to such places, so as to provide for Act IV of 1873 ceasing to apply, and at the same time to maintain all existing rights and liabilities as if the committee under Act IV of 1873 continued in existence.

"In dealing with the constitution of committees we have not thought it necessary, in section 5, to retain the provision of the Bill requiring the sanction of the Governor General in Council to a direction of the Local Government substituting appointment for election for reasons affecting the public interests when no desire for a change has been expressed by the electors. Considering how numerous municipalities in the Panjáb are, and how small some of them are, it seemed better to leave it to the Local Government to decide whether circumstances exist which render a change in this respect desirable; and, as the Bill requires reasons to be given, and any person who is dissatisfied with the direction could lay his objections before the Government of India, no further check appeared to be required.

"In section 14, as the Local Government considered the approval by the Commissioner of the election of the president of a second class committee sufficient, we have altered the Bill accordingly, requiring the approval of the Local Government in the case of first class committees only. In other respects the changes made in the provisions of the Bill as to the constitution of committees have been aimed at assimilating them to the corresponding provisions of the Panjáb District Boards Act passed last year.

"In section 20, the Local Government desired that the concluding words of the proviso, relating to the transaction of business at adjourned meetings whether a quorum is present or not, when the adjournment of the original meeting was due to a quorum not having attended, should be omitted, a report to the Local Government when a quorum was not present at the adjourned meeting being substituted. The Select Committee, however, considered the proposed substitute inconvenient, and that it was desirable to retain the provision in order to guard against the risk of combinations among members to obstruct business by absenting themselves from meetings.

"In the Bill as introduced, both the appointment and the removal of a paid secretary by a committee was made subject to the sanction of the Commissioner of the division. The majority of the Select Committee, however, were of opinion that it was not desirable to carry control over appointments to this length; and section 28 of the Bill as now modified therefore only requires the Commissioner's consent to the appointment, as secretary, of a person not being a member of committee, and to the rate of pay proposed to be allowed to the person so appointed. The powers of control given by the Bill as introduced over the appointment of other officers and servants have also been greatly restricted; but by section 30 the Commissioner is empowered to interfere to prevent the employment of unduly large or expensive establishments or the grant of excessive salaries, while section 29 makes appointments to offices requiring professional skill subject to rules to be made by the Local Government as to the qualification of the persons to be appointed.

"In section 36, requiring notice to be given before suing committees or their officers for their official acts, we have omitted as unnecessary the provisions of the Bill as introduced as to limitation of suits, which is sufficiently dealt with by the Limitation Act, and as to the effect of tender of amends, in regard to which the Courts should require no guidance from the legislature. In consequence of these omissions, we have been enabled to make the section general in its application, while in the Bill as introduced it was confined to suits for compensation for wrongful acts. I shall, however, have an amendment to propose to provide for a point which was brought to notice since the Report of the Select Committee was presented.

"In the chapter on taxation, the taxes which may be imposed for the general purposes of the Act are brought together in section 39, a schedule being added allowing a higher rate of tax on lands and buildings in the hill-stations of Simla, Dharmsála, Dalhousie and Murree than that which is fixed as the maximum elsewhere. This tax has hitherto been imposed only in these hill-stations and at Abbottábád in the Hazára district, and the practice has been to levy it upon the estimated gross annual rental of houses without making any deduction for repairs or insurance, or in hill-stations, where houses are usually let furnished, on account of the proportion of the rent estimated to be paid on account of the furniture. In the Bill as introduced a proviso was added to the explanation of 'annual value' expressly authorizing the continuance of this practice, unless, in the case of furnished houses, the Local Government should otherwise order;

but the majority of the Select Committee, while agreeing that, in order to facilitate assessments, they should be calculated on the gross annual rental, no deduction being made for repairs or insurance, were of opinion that the proportion of the rent estimated to be payable on account of furniture should not be liable to taxation, and have therefore omitted the proviso and added to the explanation words making the sum for which a house might be expected to let unfurnished the value on which it should be liable to be taxed. I may say that, in the opinion of the Local Government, there is no sufficient reason for departing from the existing practice, and that I propose to move an amendment restoring in substance the proviso which has been omitted from the Bill.

"At the end of the Bill a special section applicable only to Simla has been added, saving the land-tax, which has been substituted for the ground-rent formerly charged by Government, and which is levied concurrently with a tax on the annual value of property.

"In sections 40 and 41 we have given special powers to impose a scavenging-tax and a water-tax as payments for services rendered to the occupiers of any buildings or land, or for the construction and maintenance of works for the supply of water from which such occupiers may benefit.

"We have added provisions as to the time when new taxes shall come into operation, and have made other modifications of the provisions of the Bill on the subject of taxation, of which I need only say that they are sufficiently set forth in the Select Committee's report.

"In the chapter relating to the municipal fund and property we have brought together the provisions of the Bill as to the constitution, custody, investment and application of the municipal fund, and have added express provisions as to the vesting of municipal property and the management of public institutions maintained out of municipal funds. The Panjáb Municipal Act of 1873, unlike those in force in most other provinces, while, in section 10, it gives the municipal committee control over all property which may become vested in it, is silent as to what property vests in a municipal committee when constituted, and as to the manner in which property may be acquired by committees. As committees are now, by section 10 of the Bill, made bodies corporate, with power to acquire, hold and transfer property, and as property vesting in former committees for the purposes of the Act is transferred to the new committees by section 12, it appeared desirable to include in the Bill some specification of the property which should vest in these bodies.

Section 71, which declares the property which is to belong to the committee, is, however, made subject to any special reservation which may be made by the Local Government, so as to enable that Government to retain any public property of the descriptions specified, situated within municipal limits, which it may not be thought desirable to allow the committees to become owners of. There are of course many public buildings within the limits of some of the larger municipalities which are held not for municipal but for Government purposes, and the effect of the section is that property of this nature, as well as any other public property of the descriptions specified which it is not desired to vest in a committee, would have to be reserved by order of Government. The orders given for this purpose will remove any doubt which may at present exist whether particular property belongs to the State or to the municipality. On this point also I propose to move an amendment which will render it unnecessary to reserve public buildings maintained for other than municipal purposes.

"Section 72 gives the administration of public institutions maintained out of municipal funds to the committee, but empowers the Local Government to give orders as to the extent of the independent authority of the committee in respect of any such institution. It will thus be possible for Government to lay down any regulations which may be necessary in regard to the management of schools, hospitals and other like institutions the management and control of which may be transferred to municipalities. As cases may arise in which committees may wish to be relieved of the charge of institutions or property, section 73 enables the committee, with the sanction of the Local Government, to transfer to Her Majesty any property which has vested in it under the preceding sections.

"In the chapter relating to municipal police the only new provision is section 78, which empowers the police to arrest persons committing offences against the Act or the rules made thereunder if their names and addresses cannot be ascertained, and requires them to give immediate information to the committee of the commission of such offences, and to assist members or officers of the committee in the exercise of their lawful authority.

"It will no doubt have been observed that the Bill has grown very much in size since it was referred to the Select Committee, and this is in great measure due to the change which has been made in the form of the part of the Bill at which I have now arrived. Chapters VI and VII, consisting the

one of 46 and the other of 19 sections, take the place of 14 sections of the original Bill and of four sections of the present law. I may now briefly state how this has come about. While the present Municipal Act empowered committees to make rules for defining, prohibiting and abating certain nuisances, and for regulating the entry of their officers on private property for the detection and abatement of nuisances, the Act was silent as to many powers which are usually expressly conferred by law on municipal bodies. Some of these powers, which involved interference with rights of property and with the carrying on of particular trades, it was not thought advisable to leave to depend upon the authority of bye-laws made under the Act, and they were therefore expressly conferred in the Bill as introduced. But the Bill still contained a power to make rules prohibiting acts of the nature of nuisances, and regulating entry on private property for the detection and abatement of nuisances, and powers to issue injunctions and to make conditional orders for the removal of nuisances. With reference to this, Mr. Plowden, the Senior Judge of the Chief Court, had strongly urged upon the Local Government the desirability of specifying in detail in the Bill the acts and omissions not prohibited by the general law which should be punishable under the municipal law; and, in the letter of the Panjáb Government submitting the draft Bill to the Home Department, His Honour the Lieutenant-Governor admitted the force of Mr. Plowden's arguments in favour of this course, and expressed his willingness to go further in the direction of expressly defining the authority of committees if circumstances admitted of this. When the Bill came to be considered in committee, it was thought desirable either to append a schedule of municipal offences, which could be made applicable wholly or in part to any municipality as local circumstances might render necessary, or to make such offences punishable by the Bill itself. It was ultimately decided to adopt the latter course, and accordingly these two chapters have been substituted for the provisions of the original Bill dealing with the same subject, one setting forth with some fullness the powers of committees for sanitary and other purposes, and the other providing for the punishment of certain offences affecting the public health, safety or convenience.

"In framing the sections comprised in these chapters the bye-laws at present in force in the principal municipalities were referred to, as well as the bye-laws adopted for the municipalities of the North-Western Provinces, and the detailed Municipal Acts in force in other provinces of British India; and, while we have omitted matters which appeared to be sufficiently dealt with by other laws, as, for instance, the Indian Penal Code, the Code of Criminal Procedure

and the Police Act of 1861, we have endeavoured to give in the Bill all powers which it seemed to be necessary or proper that Panjáb municipalities should possess, and to provide for the punishment of all offences partaking of the character of public nuisances which were not otherwise provided for by law.

"Some of the powers given may not be required in minor municipalities, and some of the offences constituted may not cause such injury to the public as to require to be made punishable in those municipalities; but, as by section 170 the Local Government is empowered to except any municipality from provisions of the Bill which it considers unsuited thereto, it will not be necessary that the whole of the provisions of these chapters should be brought into force in all municipalities.

"While we have thus been enabled to strike out the provisions of the Bill empowering municipalities to make rules as to nuisances and as to entry on property for the detection and abatement of nuisances, it has been necessary to continue the powers, given by the Bill as introduced, to make rules regulating other matters in the public interest, as no uniform rules which would suit all municipalities could be suggested. These powers are given by sections 119 and 120, and in the former of these sections the subjects with reference to which rules for the regulation of lodging-houses may be made are more fully stated than they were in the original Bill, and provision is made for making similar rules in regard to houses occupied by more than one family. Section 114 also provides, subject to an appeal, which is given by section 126, for prohibiting the use for human habitation of houses unfit to be so used. The want of powers like these has recently been much felt in Simla, and powers to regulate lodging-houses may also be found useful in places such as Amritsar and Thanesar, where the population is liable to be largely increased at particular seasons by the resort of pilgrims or the holding of large fairs.

"In regard to one matter which has hitherto been regulated by municipal bye-laws,—the cultivation of crops, use of manure or irrigation of land in such manner as to be injurious to health,—the Select Committee thought it better not to empower municipal committees to make rules; and in lieu of this power it has, in section 116, made provision for authorizing the Local Government, on the report of the Sanitary Commissioner, to prohibit or regulate such cultivation, manuring or irrigation, compensation being allowed if the practice interfered with was of long standing.

"Though these chapters add a good deal to what was contained in the original Bill, the additions have been so largely of the nature of enacting rules

which are at present contained in municipal bye-laws that it has not been thought necessary to republish the Bill with a view to further discussion.

"In the chapter on the subject of control little change has been made, but its provisions have in some respects been assimilated to those of the Panjáb District Boards Act, and the list of subjects on which the Local Government is empowered to make rules has been revised. In some of the papers which have been considered by us the powers of interference given by this chapter have been objected to as much too wide and as being likely to be abused, but there is no reason to think that Commissioners or Deputy Commissioners will be disposed to interfere under section 147, 148 or 149, unless such interference is necessary to protect the interests of the public; and, if any injudicious interference should take place, it can be corrected by the Local Government when the report required by section 150 is made. It is obviously necessary that some control should exist over the action of corporations charged with public duties, whether their members are elected or nominated, and there can be no more suitable agency for the purpose than the officers in charge of divisions or districts, who will be guided by their local knowledge and experience in determining whether the circumstances have arisen which would justify their interference under the powers given by law, and also whether a suggestion from them would not be likely to induce the committee itself to do what was required, in which case recourse to those powers would not be necessary. Though the existing law, while it gave very large powers of interference to the Local Government, gave no similar powers to Commissioners and Deputy Commissioners, there was not the same necessity as there is now for such powers being possessed by them when the Deputy Commissioner was president of every municipal committee in his district and the other members were in part officials subordinate to him, and in part, unless in a few of the largest municipalities, nominated on his recommendation. There appears to be no reason to think that committees who endeavour faithfully to discharge their duties to the public will find themselves hampered by the existence of these powers of control, or will have any reason to think that they are viewed with an unfriendly eye by the executive officers of Government with whom they are brought into contact.

"In conclusion, I may be allowed to express a hope that the Bill, after the pains that have been bestowed upon it by the Select Committee, will be found to put the law applicable to municipalities in the Panjáb in a clear and satisfactory form, and that, whatever defects in it may hereafter be brought to light

by experience, they will not be such as to prevent it from working smoothly and efficiently."

The Hon'ble MR. ILBERT said :—"Of the various alterations made in this Bill by the Select Committee, there is only one to which I need refer on the present occasion, and that is the inclusion in the body of the Bill of certain powers and provisions which, under the Bill as at first introduced, were left to be given or made by rules or bye-laws. The question of how much should be put into the body of an Act of this kind, and how much power of regulating sanitary matters and suppressing nuisances should be left to be exercised by bye-laws, was discussed in connection with the recent Act for regulating municipalities in the North-Western Provinces; and, in the debate which took place on the passing of that Act, I said that, so far as my own opinion was concerned, I should be disposed to leave a reasonable amount of discretion to the Local Government. The Bill for the North-Western Provinces proposed to leave a great deal to bye-laws, the reason being that the Government of those Provinces had already framed a Code of model bye-laws which were understood to work well and which the Local Government apparently wished to leave as much as possible undisturbed. Under these circumstances, whilst we altered the form of the clause giving power to make bye-laws about nuisances, we did not think it necessary or desirable in that case to insert in the Bill provisions which had not been suggested by the Local Government, and which, if they had been inserted, the Local Government would not have had a sufficient opportunity for considering.

"But the case of the present Bill is different. In the first place, so far from there being in existence any model bye-laws which have worked well in the Panjáb, it is notorious that there has been the greatest difficulty not only in framing satisfactory bye-laws but in working the bye-laws which have been framed. In the next place, the Bill as originally framed went into much greater detail on sanitary matters and with respect to the provisions relating to nuisances than the North-Western Provinces Bill, and as it went so far there seemed no sufficient reason why it should not be carried farther. And, lastly, the municipal authorities themselves did not seem to be particularly anxious to have the power of framing these bye-laws, and they represented to the Local Government that the task of framing them required the possession of an amount of legal skill which would not ordinarily be at their disposal, unless special assistance was given to them by the Government.

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"This being so, when the Bill came before the Select Committee last spring, I asked His Honour the Lieutenant-Governor whether he would prefer to leave the Bill in its existing form, leaving all these matters to be dealt with by bye-laws, or to have it expanded by inserting the necessary provisions in the body of the Bill. I pointed out that the adoption of the latter course would involve some delay, but that it would probably save a great deal of trouble in the long run, both to the local authorities who have to frame the bye-laws, and to the Local Government who would have to sanction them.

"The Lieutenant-Governor expressed his preference for adopting the latter course, and that course was accordingly adopted.

"I am very glad that it was adopted, because I think that the addition of these chapters effects a very considerable improvement in the Bill, and also because, after having inspected some of the bye-laws made or proposed under the existing law, I am bound to admit that there is a certain amount of risk in delegating to local authorities the power to legislate about nuisances and similar matters, even when that power is exercised subject to the approval of the Local Government.

"Chapter VII of the present Bill, the chapter relating to offences affecting the public health, safety or convenience, was based, as my hon'ble friend Mr. Barkley has told us, on a comparison of several existing sets of bye-laws; and, when I looked at the first draft of that chapter, I thought that a good many of the rules which it contained were open to serious objection. There were rules which repeated provisions of the Penal Code, of the Criminal Procedure Code and of the Police Act, with modifications which would have had the effect of making those provisions more absolute, more stringent and more severe; and there were other rules which, as it appeared to me, interfered with the liberty of the subject in an unnecessarily arbitrary, minute and vexatious manner. When the draft came before the Select Committee, we applied to it a very vigorous process of weeding, and, with the full approval of His Honour the Lieutenant-Governor, we reduced its dimensions by, I think, about one-half. Even in their present form these two chapters, as Mr. Barkley has said, do materially affect the size of the Bill, and the Bill has, as a consequence of their addition, grown in bulk since its original introduction; and hence it may be objected that it is in appearance somewhat more lengthy and elaborate than is either necessary or desirable. But it is obvious that the law which will have to be administered is to be found, not in the Act alone, but in the Act *plus*

the rules and bye-laws made under it, and that the more you put into the Act the less you will have to put into the bye-laws. My belief is that, by adding to the bulk of the Act and thereby reducing the bulk of the rules, we have made the law more and not less easy to work."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY also moved that the following proviso be added to section 36:—

"Provided that this section shall not apply to any suit instituted under section 54 of the Specific Relief Act, 1877."

He said:—

"The right given by this section to committees and their officers to receive notice of action before being sued is similar to that given by section 424 of the Civil Procedure Code to the Secretary of State in Council and to public officers, in respect of their official acts. It goes beyond section 19 of the present Municipal Act, as that section, as well as the corresponding sections in the Municipal Acts of other provinces, has been held to apply only to suits for damages or compensation for some wrongful act committed by the committee or its officers in the exercise or the honestly supposed exercise of the powers given to them by law, and not to a suit for specific recovery of land, irrespective of any damage. Notice to committees where the title to land is in question is quite as important and, if the committee finds that it has made a mistake, is quite as likely to lead to an adjustment of the dispute out of Court, as where the proposed suit is one for damages or compensation; and, when we omitted the special provisions relating to limitation and tender of amends, there appeared to be no reason for not requiring notice in both cases, as in the section of the Civil Procedure Code applicable to suits against the Secretary of State.

"It has been pointed out, however, in a communication received by my hon'ble friend the Legal Member, that hardship might be caused in case an invasion of the plaintiff's right to, or enjoyment of, property was committed or threatened, under circumstances which would entitle him to apply to the Court for an injunction under Chapter X of Act I of 1877 (the Specific Relief Act, 1877), if he were required to give a month's notice before making the application, as the invasion might be continued, or the threatened invasion might be carried out, before the Court could be asked to interfere. This

objection to the section as framed appeared to be a sound one, and the amendment of which I have given notice is proposed in order to remove it.

"I may mention that two sections of Chapter X of the Act to which I have referred provide for the grant of injunctions. Section 54 provides for the ordinary case where the injunction is required to prevent the breach of an obligation, that is, a duty enforceable by law, existing in favour of the applicant. Section 55 provides for the further case where it is desired, not merely to prevent the breach of the obligation, but to compel the other party to perform certain acts; for instance, to pull down a wall by which lights are obstructed. Apparently the Court could exercise its powers under this section, if necessary, in any case in which a perpetual injunction under section 54 was applied for, as acts done after the application might render a mandatory injunction necessary, though the application was for a perpetual injunction only. The section simply enables the Court to grant further relief. But, if the plaintiff chooses to delay his application to the Court until the injury he complains of has been done, and then applies for a mandatory injunction under section 55, no presumption seems to arise that the case is of so urgent a character that he should be relieved of the obligation of giving a month's notice before he brings his suit; and I have therefore not thought it necessary to propose to extend the exemption to suits instituted under section 55."

The Hon'ble MR. ILBERT said:—"I think this is a necessary and proper amendment. My own inclination is, as I have said on a previous occasion, to dispense with the requirement of notice in actions of this kind, on the ground that notice is not necessary for the protection of the local authorities, and that in the event of litigation ensuing it introduces an additional element of expense, complication and delay. But the Panjáb officials who were consulted expressed a strong opinion that the requirement of notice would tend to promote the amicable settlement of differences, and accordingly I deferred to their opinion on this point. If, however, the requirement is retained, it certainly ought to be qualified by the exception which the English Courts have found it necessary to engraft on similar provisions in the English Statute-law."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY also moved that in the explanation of "annual value," in sub-section (2) of section 39, the words "and in the case of houses may be expected to let unfurnished" be omitted;

that after the words "Provided that" the words following be inserted:—

"(*1*) where in any municipality, or part of a municipality, houses are usually let furnished, it shall not be necessary to make any deduction from the estimated annual rent of a house in respect of so much of the estimated rent as would be payable for the use of such furniture as is usually supplied in the case of houses let furnished, unless it is shown that not less than one-fifth of the estimated rent would be payable in respect of such furniture, or such deduction is, by order of the Local Government, required to be made either generally or in any class of cases;"

and that the proviso following be numbered (2).

He said:—

"The object of this amendment, which only affects the hill-station municipalities, is to admit of the existing system of assessing the tax upon houses being maintained. While taxes upon buildings and lands are confined to a few municipalities, and therefore yield but a small portion of the municipal income of the province, they are an important source of income in hill-stations such as Simla; and, as in these stations it has been always the custom to let houses furnished without discriminating between the payment made for the use of the house and the payment made for the use of the furniture, the same considerations of convenience which have led to the house-tax being calculated upon the gross annual rent without making any deduction for repairs or insurance have also led to no deduction being made on the ground that the rent really includes a payment for furniture. If a uniform deduction were made, the result would obviously be the same as if the tax were assessed at a lower rate, and the effect of giving power to make no deduction will be the same as if the tax were to be assessed upon the net rental, but at a higher rate. If the deduction is to vary according as more or less of the rent is supposed to be paid on account of furniture, it will be necessary, not only to revise the assessment of every house in Simla, but to discover some standard of valuation by which to determine for what sum houses may reasonably be expected to let unfurnished. The most satisfactory standard obviously would be the rents found to be actually paid for unfurnished houses, but I believe I am right in saying that, if any houses in Simla have ever been let unfurnished, this has been a most exceptional occurrence. I do not know whether the houses taken as Government offices in recent years have been let unfurnished or with the usual furniture, but the demand for Government offices would tend to increase the rates of rent usually charged, the supply of houses to be let remaining the same, and the rents paid for them might therefore be considered not to afford a satisfactory standard by which to estimate rents generally.

1884.] [*Mr. Barkley.*]

"The result of the change made by the Select Committee will therefore be that, instead of estimates of rent being based on a comparison with actual rents as hitherto, the actual rent being accepted as the annual value in all ordinary cases, some deduction must be made from the actual rent where that is not itself exceptional; and this deduction, whether uniform or not, must be of a more or less arbitrary character, in default of any standard of the actual letting value of an unfurnished house being found. It must be a mere matter of opinion whether the deduction in any given case or in all cases should be five, ten, fifteen or twenty per cent. And the committee will be expected to solve this problem correctly for every house in Simla; for I apprehend that, in case of dispute, the burden of proof that the annual value assessed does not exceed the sum for which the house might be expected to let unfurnished must be borne by the committee.

Another result will be to render a general re-assessment necessary at the very time when the committee will be engaged in considering what changes in its rules should be made before they are republished under the new Act; and still another result will be a reduction in the actual income of the committee of an unascertained amount, which may very probably necessitate proposals for fresh taxation, to enable it to meet its liabilities.

"There will thus be a considerable amount of inconvenience caused by the change in the existing law on this point which the Select Committee proposes to make; and I may add that the only objection to the provision of the original Bill maintaining the existing system, which has been received from any of the places where the house-tax exists, was made by a gentleman in the legal profession practising at Simla, who seemed to think that inequality of taxation must result between furnished and unfurnished houses or houses occupied by their owners. The answer to this is that, where the proviso will apply, houses are not ordinarily let unfurnished, and that the same standard would be applied to the valuation of houses occupied by the owners as if they were let furnished. It has been suggested that books, pictures and objects of art are included under the designation of furniture, but it is not likely that any other furniture would be included in the rents usually charged than such furniture as was necessary to the enjoyment of a house, and if, in any case, a higher rent is paid because a house contains objects not usually supplied by landlords, this case would be excluded by the terms of the amendment.

"Power is also proposed to be taken for the Local Government to order deductions for furniture, so that, if in any class of cases the rule was found to

act harshly, this could be rectified by an order of Government prescribing such deductions as seemed proper. Another exception has been introduced, providing for cases in which it can be shown that not less than one-fifth of the rent is payable in respect of the furniture, but I attach little importance to this, as I doubt whether this could be shown in any case in which the furniture would be taxable under the other provisions of the section. I have retained the exception mainly because it was suggested in Select Committee, and, if any one attaches more value to it than I do, it may be allowed to stand for what it is worth.

"The case of furnished apartments, which has once, I believe, been raised in Simla, is different from that of a furnished house. Whether under the rules now in force, or under the Bill, with the proposed amendment, it would be the house, and not the apartment, which would be liable to taxation upon the amount for which it might be expected to let.

"If it is said that the amendment is objectionable in principle as making what professes to be a house-tax include a tax upon furniture, I reply that furniture is not taxed apart from the house to which it belongs, and, so far as it is taxed at all, is taxed only as an accessory of the house. Furniture belonging to the tenant or hired by him from a third party is not taxed. The tax includes a tax on furniture only in the same sense in which, if the letting-value of the house was increased by its having a good garden, it might be said to include a tax upon roses or fruit. The present system has the advantages of simplicity and certainty, and in questions of taxation these advantages are at least as important as precision of nomenclature."

The Hon'ble MR. QUINTON said :—

"As I was nominated a member of the Select Committee to which this Bill was originally referred, I think I ought not to give merely a silent vote on the question raised by the amendment of my hon'ble friend.

"I may say at once that, having been for many years of my life president of municipal committees, I approached the subject with a strong bias in favour of a measure which at first sight appeared so much to facilitate the assessment and collection of a house-tax. Nothing can be simpler than a fixed rate on the gross rentals of all classes of houses. The proposal had also in its favour to some extent the existing practice in several hill-stations, notably that in which we are now living.

1884.] [*Mr. Quinton.*]

"A closer examination of the subject has, however, led me to believe that the facility of assessment promised by the scheme put forward in the amendment could be achieved only by a disregard of sound economical principles, and the apparent simplification of the collection of the tax had not, I discovered, even the merit of success to recommend it, as in one of the papers printed relative to the Bill I found the Simla Municipal Committee asking that powers should be given to realize the large sum of Rs. 15,000 now due to them as arrears.

"The inconvenience likely to be caused by the disturbance of the existing practice in some places did not seem to me an argument of much weight. I have had some trying experiences of the necessity for readjusting municipal taxation; and although at first sight formidable obstacles to any change presented themselves, yet when the change became inevitable the obstacles gradually diminished in proportion and the new state of things turned out to be no worse than the old. Moreover, in framing a law of general application it is impossible to avoid altogether particular inconveniences.

"The amendment proposes to tax, under certain circumstances, chattels in the shape of the furniture of hired houses. If it had been made directly on section 39 (*a*), and thereby indicated clearly the intention to include among the species of property on which municipalities should be empowered to impose taxation, not merely houses and lands, but the furniture of hired houses, I cannot think that the claim would have been pressed. The unsuitability for taxation of property so perishable in its nature, so changeable in its value, and so easily made away with, has been generally accepted, and, so far as I am aware, the present proposal to treat it differently finds no precedent in the Indian Statute-book. The Municipal Acts of Calcutta, Madras, Bombay, and the North-Western Provinces and Oudh authorize the imposition of taxes on lands and houses, and direct, some of them, that the estimated gross rental be assumed as the annual value for the purposes of taxation; but they nowhere lay down that the furniture of a house is one of the constituents of this annual value, or that the owner is to pay the tax on the income derived from his furniture as well as from his house.

"It may be said that this objection only applies in a degree which is practically unimportant to the scheme of the amendment, inasmuch as the latter proposes to tax only furniture which bears a certain proportionate value to the value of the house in which it happens to be, but that this is so does not affect

the unsoundness of the principle on which the scheme rests; and only in case of extreme necessity are we justified in adopting unsound economical principles to any extent as a basis for legislation.

"The scheme, however, is open to an objection still more practical, for it is impossible that it should not give rise to inequalities in the incidence of the house-tax. No distinction is made by it between the assessment on an unfurnished and a furnished house bringing in the same rental, so long as the estimated rent payable for the use of the furniture is under one-fifth of the full rental. The owner of the latter house pays a tax not only on his house, but on his furniture, while the owner of the former pays on his house only. Similarly, the owner of the furnished house is placed at a disadvantage as compared with the man who derives an income from letting out furniture for hire. The latter pays no tax on the profits flowing from this source, while the owner of the furnished house is compelled to do so.

"Further, the proposed system will entail separate valuations for separate classes of persons, from which inequalities in the incidence of the tax must arise. One estimate will have to be made for the owner who lives in his own house and is content with scanty furniture, a second for an owner similarly housed whose tastes demand more luxurious appliances, a third for the landlord who has little concern for the comfort of his tenants, and a fourth for one of a more liberal disposition. These several classifications and estimates cannot result in uniformity of taxation, and annual valuations of furniture, if properly carried out, are not likely to create a feeling in favour of the visits of the tax-collector. If the valuations be not annual and be not carefully made, the income of the municipality will suffer, and the reason for the proposal falls to the ground."

His Honour THE LIEUTENANT-GOVERNOR said:—

"I shall vote for the amendment, and, in explaining my reasons for doing so, I will not detain the Council at any length.

"Of course, we are all familiar with the fact that, in England, the practice is to tax the unfurnished house, and we all know the reasons, so that I need not here refer to them. They are those sound economical principles to which my hon'ble friend Mr. Quinton has referred. There is perhaps the less reason to notice them, because I observe that the Select Committee has not been guided by those sound economical principles, and the English practice does not

appear to have influenced them in framing the section now under consideration. Had the Committee considered those principles applicable to the case of Simla and other European settlements in the hills, in which alone I believe a house-tax is levied, I can hardly conceive they would, in complete disregard of them, have defined 'annual value' for purposes of taxation to be the 'gross annual rent', and have proceeded to tax that gross rental without any allowance for the cost of insurance, annual repairs and other similar outlay. Whatever may be said for or against taxing chattels, a tax on the rent of furniture is, after all, a tax on profits. But insurance and repairs are direct outlay, and a tax on a gross rental which includes these is, supposing the tax to fall on the landlord, a tax on expenditure which it is infinitely more difficult to justify than a tax on a furnished house.

"Speaking chiefly with reference to Simla, which is the hill-station I am best acquainted with, the principle of taxing the gross rental, without any deduction for insurance or for repairs or for furniture, seems to me the proper one to follow. By section 60 of the Bill, the house-tax is no doubt to be an owner's tax. But that simply means that the owner, and not the occupier, is liable to the municipality for the payment of it. The ultimate incidence of the tax is in no way affected; and it is notorious that the house-tax is, with hardly an exception, paid not by the owner, but by the tenant in addition to his rent. The all but universal arrangement is for the tenant to pay, say, Rs. 2,000 as rent, plus Rs. 200 house-tax at 10 per cent. Formerly the tax was 5 per cent., and when it was doubled, a year or two ago, the extra 5 per cent. was immediately thrown by the landlord upon the tenant. In the ordinary form of leases, of which I hold a copy in my hand, there is a formal clause binding the tenant to pay the house-tax over and above the rent. In hardly any case, therefore, does the tax fall upon the landlord at all. The only practical effect of the section of the Bill, if passed into law as it now stands, will be either that landlords will have to reduce proportionately the aggregate amount demanded from their tenants, or they will simply intercept a portion of the sum paid by tenants which in reality is the house-tax, and which should on all grounds, public and private, find its way into the municipal fund instead of sticking in the pockets of the landlord.

"Again, in 90 per cent. of the Simla houses, the furniture is of the most inferior and worthless description. In former days I was for many years a tenant in Simla under various landlords, and I had generally to relegate to the garret the bulk of the furniture supplied and put in furniture of my own. In nine cases out of ten there is no material difference between a furnished

and an unfurnished house, and, as my hon'ble colleague Mr. Barkley has justly pointed out, there is no standard of what the rent of an unfurnished house should be. Why then put the committee to all the expense and trouble of trying to make a distinction in such matters without any appreciable difference but with all the chances of difference of opinion and dispute? Why for such a matter dislocate the arrangements which have hitherto prevailed between landlord and tenant? I can conceive no greater mischief than for the legislature to interfere in this way with the business customs of the community. There may of course be, and doubtless are, exceptional cases in which landlords supply a better class of furniture than usual; and there are cases in which owners occupy their own houses and furnish them both comfortably and elegantly. For such exceptional cases the amendment provides. But it throws upon those who seek exemption the onus of claiming it and of establishing their right to it; and that, I venture to think, is the correct position.

"Lastly, the section as it now stands upsets without sufficient reason what has been the continuous practice ever since the municipality was established—a practice which on the whole has worked well and satisfactorily. I am quite aware that, owing to the wretched way in which the bye-laws under Act IV of 1873 were framed, and to the defects in the law generally, there have been cases of dispute and even of hardship in connection with the house-tax, which led at one time to representations on the part of certain house-proprietors against the taxation of furniture. But I do not believe there have been half a dozen cases arising out of the furniture question during all the years the house-tax has been in force. The causes out of which they arose have been removed, partly by the decisions of the Courts, partly by the revision of the bye-laws; and such imperfections as may still remain will, it is to be hoped, be gradually removed under the new law. This continuous practice, I say, has on the whole worked well. The municipal committee unanimously desire its retention. The community desire no change. I can see no reason why a tax which is customary, which is fair in itself, which is paid on the whole without objection, which is acceptable to the general body of the community, and which is unanimously preferred by the representatives of the inhabitants, should be made to give place to arrangements which hardly anybody asks for, which are in themselves inconsistent, which disorganise business customs, which throw needless difficulties upon the municipal committee, which lessen no one's burdens, and which intercept for the private benefit of the landlord part of a payment which is in reality a public tax and which ought to find its way into the public treasury.

"For these reasons I shall vote for the amendment."

1884.] [*Mr. Hope.*]

The Hon'ble MR. HOPE said:—"At the stage at which we have now arrived in discussing this question, it may, perhaps, be convenient that I should preface my remarks in opposition to this amendment by a very brief sketch of the way in which this question has arisen. In doing this I shall necessarily have to take the case of Simla, because, although I understand from the remarks of my hon'ble friend Mr. Barkley, and other members of Council, and from other sources, that the circumstances of other hill-stations are much the same, still the present complication has arisen out of Simla, and Simla is the municipality with the working of which we are all best acquainted.

"By rules made under the Panjáb Municipal Act of 1873 it was permitted to levy a tax on "the annual rental of each inhabited dwelling-house." After the introduction of these rules, the municipality, in that rough and ready way of doing injustice which it would appear some people still so much admire, proceeded to establish the practice of taxing on the whole gross rental, inclusive of what was paid for furniture, whereas these rules allowed them to tax on the rental of the dwelling only. If they thought that the rental of an inhabited dwelling-house included all its contents, then I do not know what need have prevented them from levying a poll-tax on the inhabitants and calling that a house-tax. However, in those days, furniture was extremely scanty, and people in general were ignorant of the rights and equities of the case; they simply came up here for a short time to enjoy themselves, took a house on the best terms that they could make, and so matters jogged along. The Simla municipality, however, as the place expanded, gradually carried their procedure so far as to put assessments upon the rent obtained for furnished apartments. Furnished apartments having gradually become much more numerous in Simla, this proceeding attracted attention, and eventually one of the owners of such houses resisted the claim. As to the more strictly legal aspects of a claim of this kind, I propose to leave any exposition that may be necessary to my hon'ble colleague the Law Member. I would merely state here that the question having been referred to a distinguished lawyer at Calcutta, Mr. Evans, he advised that, in the first place, any such interpretation of the power to take a tax on the annual rental as to include furniture, &c., was entirely contrary to all custom and to the usage followed in other well known localities, and that the contemplated assessments put upon gross rental was really a tax upon the ordinary profits of a lodging-house in addition to one on the estimated annual rental. Besides that, he pointed out that in other ways the rules and mode of procedure followed

were *ultra vires* in the particular case, and I believe the municipality were consequently unable to recover the sums for which they made a claim.

"Foiled in this attempt to maintain their position in the face of advancing intelligence and civilization, the municipality proceeded in April last to put forth a new set of rules, with the sanction of the Local Government, containing provisions intended to get over the difficulty which they had already experienced. These rules contained an explanation that 'the words 'rental' and 'estimated rental' shall be deemed respectively to include also any sum paid, or agreed to be paid, or which might be expected to be paid, or to be agreed to be paid, directly or indirectly, on account of furniture, fittings (whether fixtures or not), furnishings and all other conveniences and benefits whatsoever intended to be enjoyed together with the house or other building.' I believe that the municipality are now endeavouring, although the middle of the year has passed over, to enforce these new rules; with what success I am not aware.

"At this stage, however, the matter came into the hands of the Select Committee. They found that in the original draft of the Bill laid before them provision was made for the inclusion of furniture in the taxation of houses.

"Part of section 34 provided that 'in municipalities where houses are usually let furnished it shall not be necessary in estimating the rental to make any deduction on account of the furniture unless the Local Government shall otherwise order.'

"After considerable discussion, a modified form of that provision was proposed, which very much corresponds with the amendment put forward by my hon'ble friend, namely, that a deduction shall not be made unless 'it is shown that not less than one-fifth of the estimated rent is in respect of the furniture.' The Select Committee carefully considered the original and the amended provisos, but have been unable to accept either of them, deeming them economically unsound and practically unworkable. It is this amended proviso, substantially, which my hon'ble friend now wishes to get the Council to re-insert.

"I should here like to refer to a statement of the hon'ble gentleman and to that of His Honour the Lieutenant-Governor with reference to one preliminary point. The hon'ble gentleman, if I rightly understood him, said, with reference to the difficulty of dealing with furniture when owners lived in their own houses, that of course the committee in assessing would

only take such furniture into consideration 'as was necessary to the enjoyment of the house.' Well, if that be the standard which the committee are intended to adopt, then it seems to me that this amendment is altogether unnecessary, and we need not trouble ourselves with it at all; because it only applies to municipalities in which the houses are let furnished, and, if furniture is taken to mean such furniture as is 'necessary to the enjoyment of a house,' all I can say is that there is no house in Simla in which there is sufficient furniture provided for any enjoyment of the house at all. For that statement I take the support of His Honour the Lieutenant-Governor, who argued that the houses in Simla are so exceedingly badly furnished that it was not worth the trouble of taking the furniture into consideration.

"However, to pass on to a more grave aspect of my objections, I would remark that this Council of course has the power to make this practice of taxing furniture legal; but I venture to say that it is beyond the power even of this Council to make such a provision either equitable or workable with tolerable smoothness.

"Taking, first, the equitable side of the question, it is perfectly evident that a house is a totally different kind of property from furniture. The moment we attempt to tax the two together, we drift into numerous anomalies and inequities. Why, for instance, should you take the moveables which are connected with a *house* and tax them, but not tax other moveables? On what principle are you to tax the chairs and tables in a house and not the crockery and glassware? And why, if you were to tax the crockery and glass which belong to the husband, should you not tax the trinkets or other moveables which belong to the wife? Again, we all know that here most of our houses contain in the first place a certain amount of furniture belonging to the landlord, and a certain further amount added by the tenant; but on what possible principle can the furniture of the landlord be liable to a tax, and not the furniture of the tenant standing side by side with it in the same room? I will not go further into these inconsistencies, because they have already been to a certain extent referred to by my hon'ble friend Mr. Quinton.

"Now, my hon'ble friend Mr. Barkley seems to be conscious of this inequity; for he proposes that there shall be some limit of exemption, and this limit he puts at one-fifth. I must confess that I am extremely puzzled to make out in the amendment what sort of a deduction is to be given when this one-fifth has been reached: the difficulty of reaching it I shall notice separately. What

deduction is to be made? Is there to be a deduction made of the excess of rental *over* one-fifth attributable to furniture, or when the proportion is found to reach the fifth is the deduction to be made for the entire furniture? I cannot make out which is intended, though I have thought a good deal over it. It would appear, however, that, whichever view you take, it does not very much improve the case. If we say, for instance, that on reaching the fifth you are to make a deduction of the whole of the furniture, then consider the injustice of letting off a person whose furniture is found to be, for instance, Rs. 2,050 in value, or Rs. 50 over the one-fifth, and refusing to exempt a person whose furniture was found to be worth Rs. 1,950; consider, moreover, the extreme likelihood of frauds being successfully perpetrated in connection with valuation, and so on. But if, on the other hand, you are going to make the exemption only on the excess amount, and also even if you draw any line at all, you are practically after all giving no such relief and exemption as the hon'ble member would appear to think desirable, because the houses as a rule do not, as far as I am able to say, have such furniture as would come up to the one-fifth. Supposing, for instance, that I take a house rented for Rs. 1,000 annually; the one-fifth of that would be Rs. 200. If we capitalize that at 10 per cent. (the difficulties of capitalization I will notice separately), we get Rs. 2,000. I do not think that there is any doubt that houses which let for only Rs. 1,000 a year do not usually have as much furniture in them as would be represented by Rs. 2,000. And in the same way, taking a house letting for Rs. 3,500 annually, it is improbable that there would be Rs. 7,000 worth of landlord's furniture in it. But perhaps, in answer to this argument, I may be asked—Why do you object to all this if it is such a small matter, and the maxim '*de minimis*,' &c., may be thrown at me. But my answer is that it is just in small cases that the greatest amount of hardship would occur. The lower you go down and the smaller the rent, the greater will be the amount of the tax taken without redress.

"The economic objections urged against the Select Committee's exclusion of furniture, as far as I recollect them, were only two. One was an objection drawn from the analogy of the course adopted by the Committee in the case of repairs. It was argued that, because the Committee refused to make a deduction on the gross annual value on account of repairs, they ought, in order to be consistent, to have followed the same course in this case and refused to make a deduction for furniture. But the essential difference is that a deduction for repairs is one the amount of which it is comparatively easy to ascertain in all cases. The matter is in fact so well ascertained in

different parts of the world, especially in India, that there are some of our laws which contain a provision that 10 per cent. should be deducted on this account. If it had been possible similarly to ascertain with approximate accuracy the average value of the furniture usually let with houses in Simla, possibly the Committee might have taken another view of this question; but it is obvious that this is not the case. Another economic objection taken was with regard to the incidence of this taxation being on the tenant. As to that, I would simply say that to trace the incidence of taxation in particular cases is a most difficult problem, and I should suppose that it would be exceedingly difficult to establish the position that, here in Simla, for instance, there were not some houses for which very high competition rents were paid, and others the reverse.

"Passing on to the practical difficulties presented by the amendment, I would merely state my belief, which I am glad to see has been put in a much clearer form by my hon'ble friend Mr. Quinton than I now can put it, that the present amendment would involve endless disputes and difficulties. First of all it would be necessary to have in every disputed case a list of the landlord's furniture with a valuation of it, and in order to get this a considerable amount of inquisitorial procedure, and discrimination between the landlord's and tenant's furniture, would be necessary. Having got this list, it would next be necessary to compare the value with that of an imaginary standard of houses usually let furnished in Simla, because it is stated here that the deduction is to be 'of so much of the estimated rent as would be payable for the use of such furniture as is usually supplied in the case of houses let furnished.' Therefore, the municipality must make a complete inquiry, and strike an average, and set up a standard in their own minds with which this list must be compared. My hon'ble friend advanced it as an objection against the Bill as it stands that it would be necessary to have some standard of valuation of furniture in order to make a fair exclusion of the furniture allowed for in the rental; but I think that it would be very much more difficult to establish such a standard as he desires for taxing furnished houses in Simla. Thirdly, having got at the whole of the furniture and its value, we arrive at a further difficulty, which is, at what rate are you going to put the capitalization? Is this furniture to be capitalized at a fixed annual rate—10 per cent., 15 per cent. or at what rate? Are you going to include in it insurance against destruction? What rate of interest is to be considered as giving a fair return on the investment? Other minor details will probably suggest themselves.

"In talking of the standard I omitted to say, how will it be possible, in trying to frame this standard, to treat all the different classes of houses that we find here—hotels, boarding-houses, schools, &c.? Are you going to take a hotel here and compare it with other hotels in Simla, or with hotels elsewhere, or with your own ideas of what the furniture of a hotel ought to be, or are you going to cut up the hotel in your mind into private suites and proceed to tax them accordingly? For my own part I cannot foresee the amount of dispute and difficulty which may arise out of this matter.

"There is another point I must notice, and that is, whether owners or tenants cannot contract themselves out of this provision of the amendment altogether. The municipality may have to deal with a contract, duly signed and registered, in which it is provided that so much is to be paid for the house and so much for the use of the furniture. Now, if people can contract themselves out of this amendment, then the putting it in is purely illusory. If, on the other hand, they cannot contract themselves out of it, then it appears to me we are asked to sanction an extraordinary interference with the right of private contract and arrangement.

"Another consideration is that such a provision as this is exceedingly impolitic and undesirable in the interests of the whole community, because it imposes a penalty on the good furnishing of houses. If the furniture is put in distinct from the rent, there will be a practical encouragement to landlords to invest a fair amount of capital in furniture, and they will have the assurance that they will be able to reap from that investment what would be a fair and reasonable profit, undisturbed by any whimsical and fanciful legislation.

"With regard to what fell from my hon'ble friend Mr. Barkley as to the difficulties involved in carrying out the provision which the Bill as now before us proposes, I would contend that, so far from this Bill causing any special difficulties, it would cause the avoidance of difficulties. Why the municipality of Simla cannot in the course of the next two or three months make a revaluation of furnished houses, if called upon to do so, I am unable, notwithstanding the objections brought forward, to perceive. When once the deduction has been made we shall hear no more of it, whereas in the other case, owing to the action of the municipality, we shall be liable to be perpetually involved in disputes, and to be constantly supplying funds to a very worthy branch of the professional community.

"In reply to His Honour the Lieutenant-Governor's final recommendation of the amendment, I have only to say that, if the present practice be customary, we are not called upon to continue bad customs. That the tax has been paid without objection by the people generally I simply attribute to the fact of the question never hitherto having been properly raised. I feel certain that, if, now that it has been properly raised, the Council were to allow the existing system to be continued, the difficulties arising from it would be numerous and intricate. Further, with regard to His Honour the Lieutenant-Governor's remark that the continuance of this system is desired unanimously by the representatives of the people, I would say that, to the best of the information at my disposal, it is not by any means unanimously desired by the members of the municipal committee, some of whom are strongly opposed to it. But perhaps that is hardly a point within the cognizance of this Council, or on which it is necessary to offer an opinion.

"In conclusion, I would urge that the amendment is economically unsound, that it is practically unworkable, that it is undesirable and prejudicial to the interests of the community, and I trust that the Council will reject it accordingly."

"The Hon'ble MR. ILBERT said:—I must oppose this amendment. Its practical importance is trifling, for it affects only a small number of European houses in Simla and one or two other hill-stations; and, having regard to its very limited scope, I cannot help agreeing with my hon'ble friend Mr. Quinton that the practical inconvenience likely to be caused by leaving the Bill in the form in which it was settled by the Select Committee has been enormously exaggerated. My own belief is that the insertion of the proviso moved as an amendment will produce far greater difficulties and complications than its omission, and that its chief use will be to provide food for the members of my own learned profession. The question which this amendment raises was considered very carefully by the Select Committee, and the conclusion to which the majority of us came was that, although we were very anxious—I may say extremely anxious—to meet the wishes of the Simla municipality on this and other points, yet after thrashing the question out we found that it was really impossible for us to do so. There is a very attractive simplicity about the practice of taxing a house on the rent actually paid for it, without regard to the consideration that part of the rent represents the hire of furniture; and I do not in the least blame the Simla municipal authorities

for having adopted this practice under the circumstances with which they had to deal. But a practice of this kind belongs to a state of things which, to the regret of some, to the satisfaction of others, but by the admission of all, is passing away in the Panjáb and in other parts of India. It belongs essentially to what may be called the pre-legal age. It is one of the conditions of the existence of such a simple, rough and ready, easy-going practice that it should not be too minutely scrutinised, and, above all, that you should not attempt to formulate it. The moment you attempt to do that its imperfections start to the surface, and you find it impossible to overlook them. If you lay down a simple unvarying rule, you are at once struck with the unfairness which results from it; if, on the other hand, you attempt to introduce qualifications and exceptions, you leave gaps through which a lawyer of the most moderate intelligence can with the greatest ease drive a coach-and-six. The history of the practice here in Simla very well illustrates what I have been saying. For a long time the practice of making no distinction between the rent of furnished and of unfurnished houses for the purposes of taxation went on without much friction or objection. And the reason is not far to seek. It is that the furniture which is ordinarily supplied by landlords in what are called 'furnished houses' in Simla is apt to approach the infinitesimal. I very well remember that among the pieces of practical advice which my friend Sir Arthur Hobhouse gave me before I came out to India was this. 'Remember,' he said, 'that in Simla a furnished house means a house without furniture.' But, although this is the rule, I am bound to admit that there are exceptions, and I am glad to say that there are some Simla landlords who deal more liberally with their tenants in the matter of furniture; and the fact that the practice of taxing furniture supplied by landlords tends to check the growth of this liberal practice, and to keep down the standard of what a landlord ought to supply, is one of the reasons why I object to this amendment.

"Well, as I have I said, for these reasons the practice of taxing furniture went on for some time without much dispute or objection. At last a time came when the Simla municipal authorities—very unwisely as I think—proposed to tax a householder on what was obviously not rent in the ordinary sense, but the price paid for the kind of accommodation usually given in hotels. The attempt was naturally resisted, and very properly failed. Then the local authorities proceeded to draw up a set of elaborate rules, with any number of explanations and provisos, by which they attempted to cover the ordinary cases of what are

facetiously called 'furnished houses,' and to exclude such cases as that of which I have been speaking. We had these rules before us in committee, and we were all of opinion that they would not work, and I do not believe that even the legal ingenuity of my hon'ble friend Mr. Barkley would be able to frame a proviso which would work in the way in which his proviso is intended to work. I think I see a way of walking through his proviso, but I do not intend to disclose it at this moment. The fact is that, when you attempt to stray away from the broad high road of ordinary law in such matters as taxation, and strike out short cuts of your own, you are almost certain to land yourself either in a quagmire or in a labyrinth. Simla is not the only place in the world where taxes are levied on houses; Simla is not the only town in the world where houses are commonly let furnished. But I am not aware of any precedent either in English or in Anglo-Indian law for such a proviso as that embodied in my hon'ble friend Mr. Barkley's amendment, and you may feel sure that a rule which has such obvious recommendations on the score of apparent simplicity would have been adopted elsewhere if a wider experience than is obtainable here had not shown that it was either objectionable or impracticable.

"The Lieutenant-Governor has told us that the course which we propose to adopt is inconsistent and illogical, and that, if we wish to follow the English practice, we should follow it more closely. I quite admit that, in order to be perfectly fair, we ought to follow the English precedent and require the tax to be levied not on the gross annual value but on the net annual value, after making deductions for repairs and insurance. Our reason for not doing so was this. We found that the simpler and ruder rule of taxing on the gross and not on the net annual value prevailed in Bengal and some other parts of India, and we thought that we might relieve our Simla friends from the obligation of being in advance of Calcutta in this repsect.

"If, however, the Lieutenant-Governor wishes to propose that the assessment should be on the net annual value, I should be quite willing to support an amendment to that effect."

The Hon'ble Mr. BARKLEY said:—

"With reference to the remarks of my hon'ble friend Mr. Quinton, I believe his objection to the amendment substantially is that it would lead to inequality of taxation. He put the case of unfurnished houses; but this case does not arise, as in the places where the amendment will apply the practice of letting houses unfurnished does not exist. Then he referred to the variety in

the amount of furniture in different houses; but it is not proposed by the proviso to make the tax vary with the amount of furniture in a house. It is the rent which would be 'payable for the use of such furniture as is usually supplied in the case of houses let furnished' for which it proposes to allow no deduction, and the amount of furniture which a landlord is usually expected to supply when he lets his house as a furnished house is, in any given station, pretty well known.

"As regards the observation of my hon'ble friend Mr. Hope, that the Simla municipal committee had included furniture in the tax levied on the letting value of houses as a rough and ready way of doing injustice, it is, I think, hardly fair to the committee to suggest that it aimed at doing injustice. Whatever may be thought of the extent to which the system of assessing on the full rent paid has been carried, this system is not an innovation but has prevailed ever since the house-tax was imposed, and there is no reason to think that the committee ever intended to demand anything more than what appeared to it to be a proper assessment under the circumstances." (MR. HOPE here said he was aware that the tax was from the first assessed on the rent of furnished houses, and did not mean to suggest that the committee had introduced a new system of assessing.) "As to furnished apartments, I have already pointed out that neither under the rules now in force nor under the Bill could the tax be assessed upon the rent paid for such apartments, and it is therefore unnecessary to consider them.

"As has already been shown in this debate, it would be as easy to base a charge of injustice upon no deduction being made on account of repairs and insurance as upon none being allowed for furniture; and, if the estimate of my hon'ble friend, that in most cases not more than two per cent. of the rent represents furniture, be correct, it can scarcely be said that the hardship of making no deduction is very great. My hon'ble friend the Legal Member has indeed quoted a remark made to him by Sir Arthur Hobhouse that a furnished house in Simla is to be understood as meaning a house without furniture. If we are to accept this as a correct statement of the case, there is no question before the Council.

"As regards the deduction allowed when one-fifth of the estimated rent is payable in respect of furniture, I have already said that I attach no importance to this. It was proposed in committee as a check which would exclude extreme cases, but the suggestion was not mine.

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"My hon'ble friend Mr. Hope again urged that the proviso would lead to frequent disputes, and that in case of dispute a valuation of the furniture would be necessary. He referred to what a house might be expected to let for furnished as an imaginary standard, but this implies that the rent at which an unfurnished house would let is well known, while the reverse is the case. Houses are ordinarily let with their furniture, and, unless it is alleged that something more than usual has been supplied and that the rent has been increased on this account, no question as to the amount of furniture in the house would arise. The imaginary standard in Simla which is likely to lead to disputes is the sum for which a house may be expected to let unfurnished. Supposing that, as suggested in any case, a deduction of two per cent. from the rent actually paid is proposed to be allowed, the owner may claim a deduction of 10 or 15 per cent., and it might not be found very easy to show that the house which he lets furnished for Rs. 1,000 would let unfurnished for even Rs. 800, in the absence of experience of what the demand for unfurnished houses is. It is for those who propose a change in the present system of assessment to show that it will work satisfactorily.

"When we start with the rent paid for furnished houses, no question of the possibility of capitalizing the value of the furniture could arise unless it was proposed to make a deduction on this account.

"As regards the power of contracting out of the proviso, no doubt, if landlords in general and tenants in general agreed that any charge made for furniture should be separated from the rent of the houses, the proviso would cease to apply, as houses would then cease as a rule to be let furnished. But no one contract would have this result. If the municipality were bound by the terms of the contract between landlord and tenant, they might agree that the rent of the house should be one rupee and that of the furniture one thousand rupees, and demand that the tax should be calculated upon the one rupee. But the tax is not upon the rent agreed upon, but upon the rent for which the property may reasonably be expected to let; and the committee would therefore be entitled, if the amendment passes, to estimate what the house would let for with the usual quantity of furniture.

"We have been told by my hon'ble friend the Legal Member that he thinks he sees a way of getting out of the proviso if accepted, but he has given us no hint of what it is. Of course, it is impossible to give any opinion beforehand as to what it may be possible for legal ingenuity to do, but, until the supposed way is pointed out, I can scarcely be expected to discuss the feasibility of passing along it."

His Excellency THE PRESIDENT said:—

"I came into this room today with a very great desire, I confess, to support this amendment, because I understood that it met with the approval of my hon'ble friend the Lieutenant-Governor, and it would always be my wish to agree with him, particularly upon a question not in itself of any great importance, in regard to a Bill relating entirely to his own province, and also because I understood it to be the wish of those who represent the community which is considered to be most immediately interested in the result of this motion. But, after listening with great care to the arguments brought forward on both sides,—and I may say that I do not intend to prolong this discussion by adding any arguments of my own,—the arguments against the amendment appear to me to be so strong that I cannot give it my support. It is with some reluctance that, for the reasons which I have stated, I have come to that conclusion; but it does seem to me that much practical inconvenience would arise out of the amendment, and that it is possible that a great number of legal questions would be raised upon it which would lead to great litigation. It appears to me also to be an amendment inconsistent with sound principles of taxation, and it must be borne in mind that, although this subject has been discussed this morning with especial reference to Simla, nevertheless the amendment is one of a general character which is to be applied to every municipality in the Panjáb which falls under the definition of a municipality in which houses are let furnished. I do not desire to raise any verbal arguments against the amendment, but I think a good deal of dispute might come out of that word 'usually' which occurs in it; and, looking at the matter as a whole, I am compelled to say that the arguments brought forward today against Mr. Barkley's proposal are such as to convince me that it would not be consistent with sound legislation to accept it; and therefore, so far as I am concerned, I shall be obliged to vote, though very reluctantly, against it."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that at the end of clause (*a*) of section 71 the following words be added:—

"which have been constructed or are maintained out of the municipal fund."

He said:—"The object of this amendment is to limit the generality of the words 'public buildings of every description' in the description of the property which, unless specially reserved by the Local Government, is declared by the

1884.] [*Mr. Barkley; The Lieutenant-Governor.*]

Bill to vest in municipal committees. While it is right that the public buildings required for the purposes of the Act should be vested in the committee, it is not difficult to give instances of public buildings which ought not to be so vested. As examples I may mention the Government College at Lahore, churches where the buildings are public property, post-offices and telegraph-offices, the public offices at Simla of the Government of India as well as of the Local Government, and official residences. As the section stands, it would be necessary that all such buildings should be specially reserved by the Local Government, and it would therefore be necessary for the Local Government, before declaring any place to be a municipality under the new law, to ascertain what public buildings it should order to be reserved. The amendment will obviate this, so far as public buildings are concerned, though special reservations will still have to be made in some other cases, such as the grand trunk road or other provincial high roads."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY also moved that in section 72, for the words "municipal funds" the words "the municipal fund" be substituted. He said:—"This amendment is merely formal, to bring the language of the section into harmony with that of section 67 and the remaining sections of Chapter IV."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY then moved that the Bill, as amended, be passed.

His Honour THE LIEUTENANT-GOVERNOR said:—

"Before proceeding to make such few remarks as I have to offer generally upon the Bill, I wish to take this opportunity to acknowledge with gratitude the consideration and kindness shown to me by the Select Committee in inviting me to attend their meetings informally and discuss with them various matters of principle on which at one time there threatened to be material difference of opinion. The result of these deliberations has been that a common understanding has been arrived at on most points of importance, and the Bill is presented in a form which, although I cannot say it is in all respects what the Local Government would have desired, can still be accepted as suitable, and in which I have not thought it necessary to move in this Council any amendment of importance in addition to the amendments which have been proposed by my hon'ble colleague Mr. Barkley.

"The chief difficulty I have all along felt in connection with the Bill arises from the vast variety of municipalities with which we have to deal, and the impossibility of applying uniform conditions to all of them. It is difficult for any one unacquainted with the history of municipal institutions in the Panjáb fully to appreciate the difference between this province and the other provinces of India. The system of municipal taxation and administration in the Panjáb is in reality founded upon the *chúngi* system inherited by us from the Sikhs. These *chúngi* collections were made by the Native Government in every considerable village and town in the province, and after annexation they were continued in most places by the executive orders of the British authorities, the proceeds being devoted in the first place to police, and then to municipal improvements under the management of the Magistrate assisted by a committee of the townsmen. As the country progressed under our admininistration and the necessity for legislation arose, these primitive local bodies were in due time converted into legally constituted municipalities under sundry Municipal Acts. Thus, in 1871-72, we find there were no fewer than 324 towns and places in the province in which municipal income was raised. Of these, two were constituted under the old Municipal Act, XXVI of 1850; 127 were constituted under Act XV of 1867; while 195 were minor towns in which the municipal income was raised under executive orders in accordance with previous custom. After Act IV of 1873 was passed, the circumstances of all these minor towns were inquired into; 69 of them were formally brought under the new Act, while in the remainder the municipal form of taxation was abandoned and the *chaukídárí* system established in its stead.

"To this gradual historical development of municipal institutions is due not only the fact that, of the entire municipal income raised by taxation, no less than 96 per cent. is derived from octroi, which is only the old *chúngi* purified from certain abuses, but also the circumstance that we have in the Panjáb a larger number and a greater variety of municipalities than is usually found elsewhere—commencing, as they do, with what are little better than agricultural villages, merging by insensible degrees into towns, and from towns into cities,—the old capitals of dynasties and provinces such as Delhi, Amritsar, Lahore, Multán and Peshawar,—and ending with the British settlements in the hills, where the arrangements are regulated almost exclusively by European requirements.

"We have now in the Panjáb 202 municipalities constituted under Act IV of 1873, containing a population of 2,118,236, and with a municipal income of over Rs. 28,00,000. The number of municipalities in the Panjáb is nearly

double that in the North-Western Provinces and Oudh; and it may be instructive, as showing the kind of material with which we have to deal, if I compare on one or two points the statistics of the two Provinces. We have in the Panjáb 202 municipalities against 107 in the North-Western Provinces, or as nearly as possible double. The average population, however, is only 10,500 against 26,600, or considerably less than half. The largest population in the Panjáb is 173,000; in the North-Western Provinces 261,000. In the Panjáb, 98 municipalities or 48½ per cent. have a population under 5,000; in the North-Western Provinces there are only three. We have 95 municipalities with an income under Rs. 5,000, the North-Western Provinces has 15; and, while there are in the Panjáb 146 municipalities, or 72 per cent. of the whole, whose income is less than Rs. 10,000, there are in the North-Western Provinces only 44 such.

"It will thus be seen that in the Panjáb we have to deal with a comparatively large number of municipalities, with municipalities varying greatly in their circumstances and with incomes ranging from over Rs. 3,00,000 on the one hand, to less than Rs. 1,000 on the other; that, as pointed out by Mr. Barkley, six municipalities out of the 202 absorb half the income; and that the great majority consists of petty towns, some of them only agricultural villages, in which the arrangements differ little from the old traditional arrangements we inherited from the Native Government.

"Of course, the danger of dealing with municipalities of such varied types in one Act, especially under the influences which surround us in Simla, is the danger of sacrificing the rural communities to the interests of the large cities, and perhaps to the interests of the European settlements in the hills. On the one hand, in the petty municipalities, no change in the law is really required. We can get on very well with Act IV of 1873, and even the new arrangements called for by the local self-government policy have already been successfully carried out under that Act. On the other hand, in Simla and in the large towns in the plains, a thorough revision of the Act of 1873 had become a pressing necessity. On the whole, however, although from some points of view it might have been preferable to have limited the operation of the present Bill to the larger municipalities, leaving the minor towns under the Act of 1873, I think the Bill now before us has successfully dealt with the difficulty. At the same time, it must be admitted that the Bill is in many respects a compromise between two widely different sets of requirements, and the result

necessarily is that, on the one hand, less power has been conferred on advanced municipal committees, like that of Simla, than might have been entrusted to them; and, on the other hand, the powers of the Local Government over the petty corporations have been curtailed to a greater extent than was perhaps desirable.

"I trust that the action to be taken under section 4 of the Bill will not be unduly hurried, but that ample time will be taken to carefully ascertain the suitability or unsuitability of the Act to the various municipalities. There are, of course, some to which the Act can be extended at once without hesitation or further inquiry. There are a few, chiefly in frontier districts, to which it is impossible to say that the Act will probably be extended at any time in the immediate future. But, with respect to the great majority of municipalities, careful inquiries will be necessary, one by one, in order to determine, first, the general suitability or otherwise of the Act, and second, the particular provisions, if any, to be excepted under section 170. All this will require much time, much correspondence and much careful thought, both on the part of the Local Government and of executive officers in all grades. The work which has fallen upon the officers of the Panjáb Commission during the last 18 months has been unusually heavy. I cannot press them further, but am bound to treat them with the most indulgent consideration; and I wish to take this opportunity publicly to acknowledge, with gratitude, the zeal, the energy, the loyalty and the ability with which, notwithstanding the unusually heavy calls upon them in other departments of the administration, officers of all ranks have laboured to make the Government policy a success in the Panjáb. I cannot complain if people do not read the attractive pages of the *Panjáb Gazette*. But any one who will take the trouble to look over the numbers of that amusing publication which have appeared during the last twelve months will be able to form some slight idea of the work that has been done. To say nothing of the District Boards Act and the constitution of committees and boards under its provisions,—a subject which has quite a literature of its own,—we have, without waiting for the present Bill, framed, under the provisions of Act IV of 1873, municipal constitutions differing in no essential respect from the constitution to be enacted in Chapter II of the Bill, and applied them to 117 municipalities in the Province, and, in nearly all of these, committees constituted largely on the elective system have been already appointed. That more has not been done is owing solely to the impossibility of exacting more from zealous officers already greatly overworked.

1884.] [*The Lieutenant-Governor; Mr. Hope.*]

"There remain two points in connection with the Bill to which, although they are purely matters of detail, I should like to draw attention. The first is the provision in section 20 that, when a meeting is adjourned for want of a quorum, the adjourned meeting may dispose of the business whether there is a quorum or not. The operation of this section will have to be very carefully watched; for it may encourage packed meetings and enable minorities to carry party schemes of their own, and the knowledge that business will go on whether there is a quorum or not may tempt indolent members to stay away. It would, I think, have been safer to adopt the recommendation of the Local Government to the effect that, if there should not be a quorum at the adjourned meeting, the president should at once report the matter for the orders of the Local Government, leaving the Local Government to deal with the case under its general powers of control as a case of neglect of duty.

"Lastly, I wish to explain that section 28 of the Bill is not in accordance with the wishes expressed by a large and influential section of the Simla community last year. It will be remembered that, when the Simla election rules were under discussion in the summer of 1883, a large meeting of the United Service Club represented that, in any scheme for the municipal administration of Simla, one of three essential principles which should find place was that the appointment and dismissal of the paid secretary should be subject to the approval of the Commissioner of the division or of the Local Government. About the same time a similar representation was made by the Northern India Trades Association. These views seemed to be moderate and reasonable, and the Local Government promised as far as lay in its power to give effect to them. I have accordingly done my best, but have not succeeded. I think it right to make the above explanation, but the matter is not of sufficient importance that I should divide the Council upon it."

The Motion was put and agreed to.

INDIAN TELEGRAPH ACT, 1876, AMENDMENT BILL.

The Hon'ble Mr. HOPE introduced the Bill to facilitate the construction of Telegraphs, and to amend the Indian Telegraph Act, 1876, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Ilbert and the Mover. He said:—

"In making this Motion I do not know that it is necessary for me to add very much to what I said regarding the scope of this Bill when I asked for

permission to introduce it. It is a Bill which will give power to the Government and its licensees to construct and maintain lines of telegraph over or upon property belonging to private persons or public bodies. In the details of the Bill it will be seen that we have, in the first place, as regards all property on which lines are constructed, provided that the telegraph authority shall not acquire any right over such property other than that of a user, and that he shall do as little damage as possible. Beyond that, when the property belongs to a local or public body,—called local authority here,—the power given by the Act cannot be exercised over it without the consent of that authority; and it is provided that the local authorities shall be reimbursed for any expenses to which they may be put in the exercise of the power. No compensation, however, will be awarded to them, and they will not be allowed to make any charge for the accommodation thus afforded to the public. On the other hand, in the case of private property, full compensation will be paid for all damage sustained in consequence of the exercise of these powers. Provision has also been made for the removal of a line of telegraph in the event of circumstances arising on some future occasion which render it undesirable, or inconvenient or prejudicial to private rights. In the one case—the case of the local authorities—a simple order will suffice to remove it; and in the other case any dispute may be referred to the District Judge.

"As regards the general amendment of the Telegraph Act, we have added one more amendment to the two previously mentioned; that is to say, the insertion of a few words in harmony with the recent amendment of the English Act, so as to make it quite clear that telephones are within the operation of the Indian law."

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

BURMA GAMING BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma. He said:—

"The object of this measure is to put down certain forms of gambling which are prevalent in British Burma, and which are without doubt a

fertile source of crime in that province. The particular form of gambling for which legislative provision appears to be specially needed is that which is known in Burma as the '*ti*' or 36-animal game. You would probably wish to know what this game is against which the legislative powers of the Council are invoked. It is really very simple. The *modus operandi* appears to be this. Your banker or professional gambler, who makes his living by the game, chooses one of 36 animals, and deposits a piece of paper on which its name is written in a hollow bamboo or box. Then his emissaries go round asking people to name the animal so chosen and to back their guess by putting down their money. Any one who guesses rightly gets thirty times his stake: the others lose. The theory is that the winning animal is named beforehand by the banker, but there is reason to believe that the theory does not strictly conform to the practice, and that the banker usually so arranges matters as to select the animal on which the smallest amount is staked.

"Now, the question which has been exercising the judicial minds of British Burma for a good many years past has been whether this form of amusement—I will use a neutral term—is a kind of gaming which can be hit under the Public Gambling Act, or is a lottery within the meaning of the Penal Code, or whether it merely constitutes a series of bets which is not punishable under any provision of the existing law.

"Let me explain a little more fully how the law stands. In the first place, there is the Public Gambling Act of 1867 (Act III of that year), which is in force in the North-West, the Panjáb, Oudh, the Central Provinces and British Burma. Three sections of this Act extend to the whole of these territories: the rest of the Act can only be brought into force, by order of the Local Government, in any specified city, town, suburb or railway-station, or in any place within three miles of a railway-station. The Act provides for the punishment of public gambling and the keeping of common gaming-houses; it imposes penalties on the owners, persons in charge of, and persons resorting to, common gaming-houses, and it gives police-officers powers of entry, search and seizure. Then, under one of the sections which extend of their own force to the whole of the province (section 13) a police-officer may apprehend without warrant—

'any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming used in playing any game, not being a game of mere skill, in any public street, place or thoroughfare.'

"The instruments of gaming may be seized and destroyed, and the person found gaming under such circumstances is liable to a fine of fifty rupees or to a month's imprisonment.

"So much for public gambling. Then there is a section (294A) which was added to the Penal Code by an Act of 1870 under circumstances which the Council may remember, and which is specially directed against lotteries.

"Under this section—

'Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

'And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.'

"Now, for some years after the passing of Act III of 1867 it was held that a *ti* was a form of gaming, and that the lists and papers used in the *ti* were instruments of gaming, within the meaning of that Act. This view was confirmed by the High Court of Calcutta in 1869. In 1876 the late Mr. Wilkinson and my hon'ble friend Mr. Quinton, as Judges of the Special Court of British Burma, held that *tis* were lotteries, and that, since the enactment of section 294A of the Indian Penal Code, lotteries were punishable under that section and not under Act III of 1867. Since the date of this judgment, the prosecution of the promoters of *tis* under Act III of 1867 may be said to have ceased; *tis* have been regarded as lotteries, and the persons concerned in them have been prosecuted under section 294A of the Indian Penal Code; and until lately no doubt of the applicability of that section to this particular kind of gambling has arisen.

"But two recent rulings of the Judicial Commissioner have presented a different view of the law. In the first of the cases in question the accused had been convicted by the Magistrate, under section 13 of Act III of 1867, as having been engaged in a *ti* in a *zayat* or public rest-house beside a public road. The Judicial Commissioner called for the proceedings, and, having come to the conclusion that a *ti* was not a game of chance and was mere betting or wagering, he referred the matter to the Special Court. The Officiating Recorder, Mr. Allen, dissented from the Judicial Commissioner's opinion, and held that the conviction was right. Under the constitution of the Special Court the opinion

of the referring Judge prevails. The Judicial Commissioner accordingly issued a circular in which his own view of the law is enjoined on the Courts subordinate to him,—in other words, on all Courts outside the jurisdiction of the Recorder of Rangoon,—and in which he lays down the doctrine that a *ti* is not a game nor a lottery, and that the papers used in collecting the money of the persons who take part in the *ti* are wrongly described as lottery-tickets. In the second of these cases the accused had been convicted by the Magistrate at Rangoon under section 291A of the Penal Code of keeping a lottery-office. On appeal to the Officiating Recorder, that officer referred the question of whether a *ti* is a lottery to the Special Court. The Judicial Commissioner held that it was not; the Officiating Recorder that it was. In this case also the opinion of the referring Judge prevailed. The Judicial Commissioner, however, has informed the Courts subordinate to him that his own view of the law is to be their guide. There are thus two contradictory judgments of the Special Court, and two diverse rules of law established for different parts of the province, each Judge holding to his own opinion.

"Now, the question which of these two learned authorities is right in his view of the existing law is a question on which it is not necessary for me to express an opinion. Mr. Jardine has justified his opinion by reference to some cases which have been decided in England under the English law, and I am by no means prepared to say that the cases to which he refers are not in point. But whether he is right or wrong in point of law, there can, I think, be no doubt that his decisions have had an unfortunate effect and have given a great impetus to gambling throughout the province.

"In confirmation of this statement let me read you some extracts from the Police Administration Report of British Burma for the year 1883 :—

'Gambling, admittedly one of the most fruitful sources of crime in Burma, has been frightfully on the increase of late, notably in its most dangerous form—Chinese lottery: this the Judicial Commissioner ruled could not be dealt with under the Gambling Act nor under the Penal Code; the lotteries are consequently universal all over the country. As I write I receive from a Superintendent a diary from which I give the following extract:—" In the morning strolled casually along the bank of the river and entered the verandas of four brokers' houses at hazard; found lotteries going on and being collected in each one..... In the evening went through the town, and again found lotteries hard at work." And this was in a part of the country where five robberies have occurred in the last month within a few miles radius.

* * * * * * * *

'78. The number of gambling cases brought to trial does not materially differ from that of the previous year; but that gambling has increased, and is daily increasing, is I fear, beyond a doubt.

'79. The Chinese lottery, or "36-animal game," has been reported on, written about and discussed by every officer in the province; it is the favourite form of gambling throughout Burma; it exercises the most extraordinary fascination over people of every class and age; men and women seem equally fond of it and children take to it eagerly; and, as it has now been declared by the Judicial Commissioner not to be illegal, it is in full swing all over the country. Rangoon is an exception; there the Recorder has declared it to be still punishable under section 294A of the Indian Penal Code, and it is therefore kept in check to some extent.

'80. So much has been said and written on the subject of gambling in British Burma that it is superfluous to dilate on the subject. The most competent judges have given it as their opinion that gambling is one of the principal sources of crime: the most dangerous form of gambling is now legalized, and crime is increasing with giant strides.

'81. A draft Bill for the prevention of gambling has, I believe, been submitted to the legislature by the Local Government. Some stringent measures are absolutely necessary if anything like order is to be preserved in the country. It is not only the magistracy and police who are calling out for help in this respect; the lugyis or elders have on several occasions petitioned the District Magistrates to put down this crying evil; and who are better judges than they of the harm that is being done by gambling?

'82. It is not only that the gambling itself does harm, but the lottery-houses in many places are the haunts of loose characters; liquor and opium add to the excitement of the lotteries, and the result is riots and quarrels, ending in one or more being carried off with dangerous or fatal wounds, and others concerned in the infliction, or abetting the infliction, of these wounds being carried off by the police or absconding from justice, possibly to become habitual criminals and pests of society.'

"The request for legislation which is embodied in this report is only a repetition of similar representations which had been made on many previous occasions. In consequence of a representation to the same effect which had been made in the previous year (1882), the Chief Commissioner issued a Resolution directing the Commissioners of the province to obtain an expression of public opinion on the question. With the Resolution were circulated various papers bearing on the subject, including a Bill for the suppression of unlawful gaming which was before the legislature of the Straits Settlements. Special inquiry was made as to whether the people of Burma desired, and were prepared to accept, a stringent gaming law similar to that Bill.

"The answers showed clearly that the Burmans as a body regarded the prevalence of gambling, specially as practised in the *ti*, as a very great evil. Government officers were almost equally strong in their denunciations of these *tis*. With a few exceptions the opinions received were in favour of suppressing this and other forms of public gaming, and the Bill proposed for the Straits Settlements was accepted as a guide to the direction which legislation should take.

"These answers came in at a time when Mr. Charles Crosthwaite was officiating as Chief Commissioner, and the advice which he gave us was by all means to legislate, but not to take the proposed Straits Settlements Ordinance as a precise guide to legislation.

"After mature consideration," says the letter of the Chief Commissioner,—

'of the opinions of the local officers and of the Native gentlemen who have been consulted, the Chief Commissioner's opinion is strongly against the endeavour to copy the measure proposed by the Government of the Straits Settlements. This draft Ordinance is a very complicated piece of legislation, very stringent in its provisions, and very likely, unless worked under closer supervision than can be given to it in Burma, to become an engine of oppression. Mr. Crosthwaite is not at all in favour of a crusade against gambling of every kind. A people like the Burmese must have amusement of some sort. It is quite possible to make gambling an expensive amusement, but to stop it altogether, if the people wish to indulge in it, is beyond the power of the law, and the attempt to do it will only result in systematic bribery and the corruption of the police. From the papers submitted it appears that what is chiefly needed is the repression of the professional *ti*-gambler, the man who makes his living by going about inducing people to game and as often as not swindling them out of their money. The urgent requisite is a law which will enable the authorities to deal with professional gamblers, and all who aid and abet them, with prompt severity, wherever they may be found. For other purposes the Act of 1867 appears to be sufficient, and the Chief Commissioner does not desire the extension of all its provisions to the province generally.'

"Mr. Crosthwaite submitted with the letter from which I have been quoting two alternative drafts, either of which he suggested might be taken as the basis of legislation. The chief difference between them was that one of them was so framed as to deal exclusively with *ti*-gaming, whilst the other proposed to repeal the Act of 1867 and re-enact it for British Burma with the necessary additions and modifications.

"Since Mr. Bernard has resumed office as Chief Commissioner, he has strongly urged upon us the necessity for early legislation on the lines of the proposals submitted to us by Mr. Crosthwaite.

"I think I have said quite enough to show that some legislation on the subject is urgently required. I will reserve until the introduction of the Bill my explanation of the precise manner in which it is proposed to amend the law. All I will say on the present occasion is that, of the two alternative proposals submitted to us by Mr. Crosthwaite, we have resolved to adopt in principle the former, that is to say, not to recast the Gambling Act, but to amend or supplement it in such a manner as to bring the game of '*ti*' within the grasp of the law. There is some difficulty in adapting the provisions of the Act of 1867 to this particular game, because that Act is directed against public gambling, and the keeping of and resort to common gaming-houses, whereas the game of '*ti*' is carried on also in private houses; but this is a kind of difficulty which can probably be got over by a little ingenuity of drafting. And, if the game is to be made an offence, I do not see why it should not be made punishable both under the provisions of the Penal Code and under the Gambling Act. When I say that the offence should be punishable under both these provisions, of course I do not mean that a man should be made punishable twice for the same offence, but merely that the two Acts should to a certain extent overlap each other, and that the prosecutor should be left his choice of proceeding under one or the other, according to the circumstances of the case."

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 27th August, 1884.

SIMLA;
The 28th August, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 388 L. D.—20-8-84.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 27th August, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

SETTLEMENT-OFFICERS' (PANJÁB) DECISIONS VALIDATION BILL.

The Hon'ble MR. ILBERT moved that the Reports of the Select Committee on the Bill for the validation of decisions passed by certain Settlement-officers in the Panjáb be taken into consideration. He said:—"The original object of this Bill was to cure some formal defects in the appellate jurisdiction exercised by certain Settlement-officers—defects which it was apprehended might have the effect of invalidating their orders. Whilst the Bill was before the Select Committee it was pointed out to us that cases had also occurred in which Settlement-officers had exercised jurisdiction as Courts of first instance without having had that jurisdiction conferred on them in the precise manner required by law; and the Bill has been amended and modified so as to meet those cases also."

The Hon'ble Mr. BARKLEY said:—"With reference to this Bill I need only say that, while no steps had been taken when it was introduced to

call in question any of the appellate decisions as to the validity of which it was then proposed to remove doubts, a case has since occurred which illustrates the importance of putting an end to any doubts of this nature. In an appeal relating to a large extent of land, mostly culturable waste, which was heard in March last by a Bench of the Chief Court, it was contended on behalf of the Secretary of State for India, who was one of the parties, that the question of the ownership of the land in suit had become *res judicata* by a decree passed by the Settlement-officer as a Court of original jurisdiction more than ten years before. It turned out that the Settlement-officer had been empowered by notifications issued in 1869 to decide suits relating to land in two tahsíls of the district, but that the land in dispute was situated in another tahsíl, with regard to which no similar notification had been issued. It therefore became necessary to set aside the decision of the Commissioner of the division that the question was *res judicata*, and to remand the case for trial and decision on the merits of the claim. Thus, though the Settlement-officer's decision had not been appealed against, and the plaintiff, who was not aware of the defect in the jurisdiction of that officer, brought the fresh suit under the impression that a subsequent order, passed by that officer on an application to reopen the case, treated the question as one which had not been finally adjudicated upon, it was found necessary, when the defect came to light, to hold that the decision pronounced ten years before was passed without jurisdiction. Other questions were raised by the appeal which it therefore became unnecessary to decide, but, had the defect in the jurisdiction been removed, those questions might have been disposed of.

"As this case showed that there were instances in which the validity of original as well as appellate decisions was open to question owing to the necessary notifications not having been published, the Bill has been amended by the Select Committee so as to render valid any decisions of Settlement-officers which would have been valid if they had been duly invested with powers to decide suits or appeals relating to land, unless when such decisions have already been declared by a competent Court to be invalid. When the decision has been pronounced invalid by a competent Court, it will be seen that it is not proposed to give validity to it.

"Many decisions passed by Settlement-officers and in appeal by superior authorities are liable to be called in question on the grounds stated in the preamble to the Bill, and it cannot be doubted that it is expedient to put the validity of such decisions beyond dispute, and thus to prevent the renewal of

litigation with regard to questions which have already been judicially determined, and this in many cases after an appeal to a superior Court."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BURMA GAMING BILL.

The Hon'ble MR. ILBERT also introduced the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma, and moved that it be referred to a Select Committee consisting of His Honour the Lieutenant-Governor of the Panjáb, the Hon'ble Messrs. Gibbs and Quinton, and the Mover, with instructions to report in a month. He said:—

"The principles which I have endeavoured to keep in view in framing this Bill are, first, that it is not necessary or expedient to make a crusade against gaming generally; secondly, that it is not expedient to make any greater changes in the existing law or procedure than are absolutely necessary for the purpose of bringing within the scope of the law a particular form of gaming which has proved to be a very serious nuisance; and, lastly, that the man whom we are particularly anxious to hit is the professional gambler. We do not wish to be hard on the ordinary players of the game, who include, as the Police Reports tell us, women and children.

"The Bill begins by enacting that the game of *ti* shall be deemed a lottery within the meaning of the Indian Penal Code. Of course, by doing this we do not intend to declare that the Judicial Commissioner was wrong in his view of the meaning of the existing law; we merely intend to make the game of *ti* when played within British Burma a lottery for the purposes of the Penal Code, and punishable as such. My reason for bringing the game within the Penal Code is that at the present moment in the town of Rangoon, where the Recorder's law prevails, this particular game is punishable under the Penal Code, and I am anxious to disturb the existing practice as little as possible. If, however, the authorities of British Burma should be of opinion that the remaining provisions of the Bill are sufficient for the purpose without this section, I should be quite willing to drop the clause or to substitute for it a clause declaring that the game of *ti* is not a lottery within the meaning of the Penal Code.

"Then the Bill goes on to say, in section 3, that the game of *ti* shall also be deemed gaming within the meaning of the Gambling Act of 1867, and the section contains some other provisions, the chief effect of which will be to make taking part in the game an offence whether the game is carried on in a public or in a private place.

"Then come two sections, which are aimed against the professional gambler. The first makes him liable to fine, and to six months imprisonment for the first offence, and two years imprisonment for a subsequent offence. The other gives Magistrates power to demand security from persons who notoriously earn their living or part of their living by gaming of this description."

The Hon'ble MR. BARKLEY said:—"Before the Motion is put, I wish to mention one point, which will, I think, have to be considered by the Select Committee, and on which it seems desirable that the opinion of the Chief Commissioner and other local authorities should be elicited before the Report of the Select Committee is presented.

"Section 2 of the Bill puts a local interpretation upon one of the provisions of the Indian Penal Code, which is a general law. It must of course be admitted that in India we cannot always avoid having local interpretations of general enactments, as the High Court of one province is not bound by the decisions of the High Court of another, and, therefore, when one High Court puts a construction upon any provision of the law, that construction, so long as it is not adopted by the other High Courts, becomes a local interpretation. If different local interpretations are thus put upon the same law, and the question involved is one of much importance, it usually becomes necessary for the legislature to intervene to amend the law, so as to put its meaning beyond doubt. But, though we may thus have judicial constructions of the same law which are in conflict, and each of which is authoritative in a particular province, it cannot be denied that this is an evil. It causes uncertainty as to what the law is, not only in other provinces, but in that where the question has been decided, as it is always possible that the High Court may be asked to reconsider its former decision in the light of the arguments which have led another High Court to a different conclusion. And, when the authoritative interpretations adopted in different provinces are in conflict, the Courts of at least one province must be administering a law different from that which the legislature would have prescribed, had its attention been drawn to the point with regard to which the difference exists.

"But, if it is necessary to ask this Council to interpret any of the provisions of a general law, it can do so by an enactment which will be co-extensive with the law to be explained, and I think that this course should be adopted, unless very strong reasons can be shown for giving the explanation a local application only. A local interpretation by the legislature may give rise to the same uncertainty as to what is the law elsewhere as that which may result from a judicial interpretation by the High Court of a particular province. It may be argued, on the one hand, that the legislature has explained its own meaning, and that this explanation must carry great weight in provinces other than that for which it was given, and, on the other hand, that, if the explanation was intended to be of general applicability, it would not have been included in a law extending to one province only, and that the legislature must have had some reason for thus limiting its effect to a single province.

"If the latter argument prevails, the High Court of any other province would have to determine the interpretation of the enactment irrespective of the interpretation put upon it by the legislature for another province, and may be led to adopt a different interpretation. It may thus be decided, in case this measure becomes law, that the game known as *ti* is not a lottery in the ordinary sense of the term, and that, though it must hereafter be deemed a lottery within the meaning of section 294A of the Indian Penal Code in British Burma, it cannot be so deemed in Calcutta or Assam. There would then be a conflict between the statutory interpretation of the law for one province and the judicial interpretation of the same law for another.

"Such a conflict should be avoided if possible, and I think it should be suggested—the suggestion, indeed, has already been made by my hon'ble friend the Legal Member—for the consideration of the Chief Commissioner whether it is necessary to retain section 2, considering the extension given to Act III of 1867 by sections 3 and 5, and the additional provisions contained in sections 4 and 6. If his reply is in the affirmative, and the Select Committee is satisfied by the reasons given, I would ask the Select Committee to consider whether section 2 should not be declared to extend to all India.

"I do not propose to discuss the question whether the *ti* game, which has been described by my hon'ble friend at our last meeting, is a lottery in the ordinary sense of the word. Apparently, different conclusions have been come to on this point by the superior Courts of British Burma at different times, and I have not the advantage of knowing the grounds on which those conclusions were based. I have no doubt that the legislature can, if necessary, give

the word an artificial sense. But, if the game is not a lottery in the ordinary sense of the word, it should, I think, be considered, before it is declared by law to be a lottery, whether the object aimed at cannot be accomplished in some other way. In an Act of 1872, no longer in force, the legislature explained the expression 'Native State' in such a way that a learned Chief Judge of one of the High Courts was unable to persuade himself that it could have meant what it said, and there is always some risk in using words in an unusual sense when this can be avoided."

The Hon'ble MR. ILBERT said:—"The point raised by my hon'ble friend Mr. Barkley will doubtless be considered, and ought to be considered, by the Chief Commissioner of British Burma and by the Select Committee, and I have already expressed my willingness to drop section 2 in case it should be considered unnecessary by the local authorities.

"Meanwhile, all I need say is that the Bill only extends to British Burma, and that its effect is not to put an authoritative interpretation upon the Penal Code, but merely to make a certain kind of game when carried on within a particular province an offence punishable under a certain section of the Penal Code."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *British Burma Gazette* in English and in such other languages as the Local Administration might think fit.

The Motion was put and agreed to.

BURMA STEAM-BOILERS AND PRIME-MOVERS BILL, 1884.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Burma Steam-boilers and Prime-movers Act, 1882. He said:—"The object of this Bill is to amend the Burma Steam-boilers and Prime-movers Act, 1882, in such a maner as to provide for the grant of certificates to engine-drivers, authorizing them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power. Under the Act as it at present stands, certificates can be granted to engineers of the first and second classes only, and all boilers and prime-movers must be in charge of engineers of one or other of these classes. The Board of Examiners appointed under the Act have recently represented to the Chief Commissioner that these provisions

cause unnecessary hardship to a class of Native drivers who can be trusted to manage, and actually do manage, small engines. It would be misleading to give these men engineers' certificates of any class, inasmuch as they are in no sense engineers. On the other hand, it is only fair to them and the small mill-owners who employ them that they should be eligible for some sort of certificate and be permitted to take charge of boilers and prime-movers attached to engines of low horse-power. Under these circumstances, the Board suggest that the Act should be amended in such a way as to authorize the grant to such persons, when found competent, of engine-drivers' certificates, which will empower them to take charge of boilers and prime-movers attached to engines of not more than twenty horse-power, and they point out that there is a precedent for the grant of such certificates in the Inland Steam-vessels Act, 1884, sections 28 and 29. The suggestions have received the support of the Chief Commissioner."

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 10th September, 1884.

SIMLA;
The 29th August, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla,—No. 422 L. D.—29-8-84.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Wednesday, the 10th September, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

BURMA STEAM-BOILERS AND PRIME-MOVERS BILL, 1884.

The Hon'ble MR. ILBERT introduced the Bill to amend the Burma Steam-boilers and Prime-movers Act, 1882, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Quinton and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *British Burma Gazette* in English and in such other languages as the Local Administration might think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 24th September, 1884.

SIMLA;
The 11th September, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 463 L. D.—11-9-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Thursday, the 25th September, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

MARRIAGE LICENSES VALIDATION BILL.

The Hon'ble MR. ILBERT moved that the Bill for the validation of certain licenses to solemnize marriages granted to Ministers of Religion under Act XXV of 1864 be taken into consideration. He said:—

"The object of this Bill is, as clearly appears from the preamble, to remove from the existing Christian Marriage Acts a flaw which, if it were allowed to remain and if its existence became generally known, might cause cruel hardship to innocent persons. The Bill has been circulated for opinion, and its provisions have met with general approval. The only suggestions for its amendment which I need notice here are contained in papers from Mr. Justice Mahmúd of the Allahabad High Court and from Mr. Justice West, the latter of which did not reach me until yesterday.

"Mr Justice West remarks that, while the Bill makes a necessary provision for the case of Ministers licensed under Act XXV of 1864, a similar provision seems equally requisite, or may be so, for the case of Ministers licensed under Act V of 1865 and celebrating marriages without a fresh license under Act XV of 1872. But it will, I think, be found that this latter case is already covered by

the second paragraph of section 2 of Act XV of 1872, which saves licenses granted under the Act of 1865 though not licenses granted under the Act of 1864. Mr. Justice West also suggests that Ministers should be commanded to do all things required by the Act in force when they celebrate any marriage. If the meaning of this suggestion is that a marriage under the licenses with which the Bill deals should not be valid unless the conditions are observed which under the Act in force are essential to the validity of the marriage, then I think it is clear that this would be the effect of the Bill as drawn.

"And, lastly, both Mr. Justice West and Mr. Justice Mahmúd suggest that, if the Bill is to be made retrospective, as we propose to make it, there should be savings in favour of civil rights acquired under the law as it stands, and of persons who through the retrospective operation of the Bill, may become bigamists subject to punishment, though, when actually married the second time, their first marriages were substantially void.

"Mr. Justice Mahmúd refers, as a precedent for such a saving clause, to the legislation proposed for altering the law as to marriage with a deceased wife's sister. But I should point out that there is a material difference between the objects of such legislation and the objects of the present Bill. It is one thing to make legal marriages which were intentionally made illegal, and are notoriously illegal, and quite another thing to declare the effect of the existing law to be what it was undoubtedly intended to be, and what it is generally believed to be. A much closer parallel to the present Bill is to be found in numerous other English Statutes which have been passed for similar purposes. The Statute which is most closely analogous is perhaps one which was passed in 1868 (31 & 32 Vic., c. 61) for validating marriages solemnized before persons acting as Consuls. This Act does not contain a saving clause. Then a large number of Statutes have been recently passed for curing such formal defects as the insufficient publication of banns or the celebration of marriages in a wrong building. I find that the great majority of these Statutes contain no saving clause, and that the very few exceptions may be accounted for by special circumstances, such as the fact that litigation had taken place or was still pending with reference to the questions which the Act was intended to set at rest, or that the validity of the marriages to be legalized was notoriously a matter of general doubt, on grounds quite different from the technicalities of Statutes. For instance, there had, I believe, before the passing of an Act of 1879, been great and general doubt about the binding efficacy of marriages solemnised before officers of Her Majesty's Navy, and this doubt was not confined to lawyers. In such exceptional cases there has been occasionally a

proviso that the enactment shall not render valid any marriage which before the passing of the Act had been declared invalid in a Court of competent jurisdiction, or any right dependent on the validity or invalidity thereof, or render valid any marriage where either of the parties has before the passing of the Act and during the lifetime of the other party lawfully intermarried with any person.

"But in the present case there is not the slightest ground for believing that the validity of any marriage contracted under the licenses with which we propose to deal has ever been questioned in a Court of law, and it is extremely improbable that any person has married again on the faith of his first marriage being held invalid in consequence of the flaw which we are now seeking to remove. In fact, the knowledge or suspicion that there is such a flaw has been probably confined to an extremely small number of legal experts. If there be any person so astute as to have discovered the flaw, and so unscrupulous as to have taken advantage of it, I think we should do no substantial injustice by leaving him to the mercy of the Criminal Courts. The nominal sentence which would probably be passed on him would be far from commensurate with his moral deserts, and he might count himself, as bigamists go, a remarkably fortunate man. But on the whole I think that the extreme improbability of any case having occurred for which a saving clause is required fully justifies us in following the precedent which is supplied by the vast majority of English Statutes *in pari materiâ*, and in not inserting any such clause. I have therefore not proposed to make any amendment in the Bill as introduced."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill be passed.

The Motion was put and agreed to.

STRAITS SETTLEMENTS EMIGRATION ACT, 1877, REPEAL, AND EMIGRATION ACT, 1883, AMENDMENT, BILL.

The Hon'ble SIR STEUART BAYLEY moved for leave to introduce a Bill to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883. He said :—

"The Bill which I am now asking for leave to introduce is not very complicated in its machinery ; but it brings to a close a controversy which has been going on in a sort of triangular way between three Governments for the past twelve years—the Straits Settlements Government, the Madras Government and

the Government of India. Under the Emigration Law of 1872, emigration to the Straits Settlements was free for the most part of India, and, under the more recent Act of 1883, the Straits are expressly excluded by the definition of 'emigration,' but from Madras it has always to a certain extent been controlled; however, from the greater part of India there is no emigration to the Straits; the only emigration of importance is from Madras, and, when the Emigration Act of 1872 was under consideration, the Straits Settlements Government were moving the Government of India to allow emigration to go free and unrestricted, and the Madras Government were anxious to maintain the same system towards the Straits as was in force with respect to other Colonies. The Government of India rather inclined, I think, at that time to the Straits Government, but acted as judicious bottle-holder, and finally the controversy for the time being was settled by the compromise which Sir Arthur Hobhouse proposed, and which took effect, after a very long incubation, in the shape of Act V of 1877, which I am now asking leave to repeal. The difference between the system which was brought in under Act V of 1877 and that in force in the different Colonies is this: as a rule in the case of Colonial emigration the emigrant enters into a contract in this country with the Agent of the Colonial Government, and the Government takes upon itself the responsibility of feeding him and conveying him to the colony, and does not attempt to recover those expenses from him. Under the system of Act V of 1877 the Straits Government was entirely unwilling to take upon itself that responsibility, and for very good reasons I think. The consequence was that the emigrant had to depend for the necessary advances to cover those expenses upon the individual employer of labour with whom he contracted. Then the question arose, how was that money to be recovered? The Government of Madras objected to the emigrant starting life in a new colony with the burden of the debt of those advances upon him, and the Colonial Government did not in the least see why their general tax-payers should be taxed in order to pay the expenses of the labourers of a small class; the result was that a curious conflict of law came about. The Straits Ordinance which was supposed to enforce our law made those advances recoverable, and provided for their recovery. Section 16 of our Act provided that all contracts made for the recovery of such advances from subsequent wages were illegal and void. Each Government legislated according to its own view, and, notwithstanding the provision in the Straits Ordinance of 1876, Act V of 1877 was passed. None the less from that day to this these illegal contracts have been enforced, and the money advanced has been recovered.

"The other provisions of Act V of 1877 referring to the incidence of control are not very important. They provide for a three years' indenture, maximum

hours of labour, minimum wages and the protection of the Protector, the latter being an officer appointed by the Madras Government, but drawing his salary and receiving his orders from the Straits Government. When the Act was introduced, Sir Arthur Hobhouse was apparently not very strongly impressed in its favour, and what he said about it was this :—

'He confessed that he was in hopes that, when a sufficient law had been passed on the other side of the water, nothing would have been found necessary on our side beyond the mere removal of the shackles placed on emigration by the Act of 1871.'

"But he accepted the opinion of the Madras Government, and consequently Act V of 1877 became law. At the same time, Sir Andrew Clarke, who as Governor of the Straits had made himself personally acquainted with the conditions of the problem, said :—

'There was no doubt that the Tamil population of the Straits were in a better condition than their countrymen whom they had left in India; great numbers of them were well-to-do, with large properties; and anything which would check that emigration from the coast of India was undesirable, at the same time that it would cripple and reduce the large industries in sugar and other tropical staples which were valuable to that part of the country and to interests both English and Indian.'

"These were the circumstances under which Act V of 1877 was passed. But the controversy did not end here; it has been going on at intervals ever since; and especially the necessity for reconciling the Indian Act with the Straits law has been continually urged upon the Government. An inquiry was held in the Straits, and very complete information was obtained regarding the coolies who emigrated there, and on the whole the inquiry was very satisfactory, and it was in these circumstances that the matter came again before the Government of India a little more than two years ago. The question had then to be entirely reconsidered, for it appeared that side by side with this system of protected emigration under our law there had grown up another system of free and unrestricted emigration of coolies who found their own way across from Madras to the Straits and paid their own passage as passengers. Most of them were helped by advances received from the chetties and contractors, who took their chance as to the possibility of recovering those advances from the wages of the labourers on the other side; and, to show how strong that system was, I find that the figures given during the enquiry of 1882 showed 20,000 free emigrants in recent years as against 5,000 emigrants who had gone under our law; and in that particular year the protected emigrants were 850 as against 5,000 who had gone free. In other words, while we had taken great pains to discourage and repress free emigration, that system had the logic of

facts on its side, and showed remarkably successful results as against our restrictions, and the main tendency of our law had been to drive away the business from the port of Negapatam, where it was supervised by the Madras Government, to the French port of Karikal, where it was under no supervision. When, therefore, the papers came before the Government of India, they saw that Act V of 1877 was a failure, and they cast about them to see if some *modus vivendi* could not be effected between the two systems which would secure for the Madras Government that their emigrants would be protected in the Straits, and for the Straits Government that there should be no restriction in regard to the coolies leaving Madras. The Straits Government undertook to meet the Madras Government half way, and to provide an adequate system of protection when the emigrants got to the Straits. It seemed that there was no apparent impossibility in reconciling those two objects, but it would have been obviously hopeless within a reasonable time to bring a three-cornered controversy of this kind to a result in writing, and so the Government decided to depute Mr. Buck to see what he could do towards effecting a speedy settlement of the matter in person. This mission he successfully accomplished. He first visited Madras, to ascertain the points on which they mainly insisted; and with their views in his possession he proceeded to the Straits, laid the matter before the Government there, and got them to agree to pass an Ordinance incorporating the points which the Madras Government insisted upon; and we have now before us the terms of the Ordinance which they have framed. This Ordinance the Madras Government have accepted as sufficient, and they are now willing that we should withdraw the restrictions imposed upon emigration by Act V of 1877. The effect of these arrangements will be that there will be no interference whatever with the embarkation of emigrants; the emigrant will be registered, and a complete nominal roll of all the emigrants going in one ship will be made by the Agent, handed over to the master of the vessel, upon whom there is the responsibility of delivering that nominal roll to the authorities at the Straits, and of admitting no further emigrants on board. All this requires no fresh legislation; it can be done by executive authority under the Passenger Ships Act. No contract will be entered into on this side of the water, but when the emigrant arrives at the Straits he will enter into his contract under the supervision of the officer appointed by the Straits Government. I may mention that one alteration to be effected is this, that the Protector hitherto appointed by the Madras Government; but paid by and receiving his orders from the Straits Government, will in future be appointed by the Straits Government, while the Madras Government will have the power to send an officer from time to time to

the Straits to inspect and report, who will have full legal powers of entry and examination.

"The protection after arrival is dealt with by the Straits Ordinance. It is confined primarily to those who contract for employment on agricultural labour, but the Straits Government has power to make the Ordinance applicable to other classes of labourers.

"Recovery of advances made to assist emigrants is provided for, but only to the maximum extent of 12 dollars and at the rate of one dollar a month.

"The Ordinance also provides for a minimum scale of wages, which vary according to sex and age and to the length of service in the Straits; the term of indenture is three years, which is the old term. The other provisions of the Ordinance as to protection on the spot, that is to say, the provisions as to house-accommodation, hospital-accommodation, rations, medical inspection, inspection by the Agent, penalties for desertion and neglect, penalties for offences against the emigrant—all these follow very much the lines of our own legislation and are considered adequate.

"The Madras Government are satisfied with the action of the Straits Government, and having secured, as Sir A. Hobhouse said, efficient protection on the other side of the water, we may, I think, safely abstain from further ineffectual interference with the freedom of emigration on this side."

The Motion was put and agreed to.

BURMA GAMING BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma.

BURMA LOCAL SELF-GOVERNMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the law relating to Local Self-government in British Burma.

RANGOON WATER-WORKS BILL.

The Hon'ble MR. ILBERT asked for leave to postpone the presentation of the Report of the Select Committee on the Bill to confer powers and impose

duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of Water in that Town.

Leave was granted.

PANJÁB COURTS BILL.

The Hon'ble MR. BARKLEY presented the Report of the Select Committee on the Bill to amend the law relating to Courts in the Panjáb.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Hon'ble Peári Mohan Mukerji be added to the Select Committee on the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 2nd October, 1884.

SIMLA;
The 1st October, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla.—No. 499 L. D.—2-10-84.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Thursday, the 2nd October, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

STRAITS SETTLEMENTS EMIGRATION ACT, 1877, REPEAL, AND EMIGRATION ACT, 1883, AMENDMENT, BILL.

The Hon'ble SIR STEUART BAYLEY introduced the Bill to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883, and moved that it be circulated for opinion.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

BURMA GAMING BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to provide more effectually for the suppression of

certain forms of Gaming in British Burma be taken into consideration. He said:—

"We have not made many alterations in this Bill. The authorities of British Burma do not think it necessary to make the game of *ti* a lottery within the meaning of the Penal Code, and consequently we have omitted the section to which my hon'ble friend Mr. Barkley took exception on the introduction of the Bill.

"The Chief Commissioner has suggested one or two minor amendments, all of which we have adopted with one exception. He suggests that we should extend the meaning of the term 'common gaming-house' by adding to the words 'house, walled enclosure, room or place' the words 'enclosed or unenclosed.' It is difficult to say precisely what the word 'place' would or would not include in this connection. The English Courts, in construing similar expressions in the English Lottery Acts, have given the word a very wide interpretation, and their decisions, though not binding on the Indian Courts, would probably be looked to as a guide. But I think that the addition proposed by the Chief Commissioner would extend the meaning of the term 'common gaming-house' further than we are warranted in extending it, would be inconsistent with the mode in which the expression is used throughout the Act of 1867 and would lead to confusion. Nor is the addition necessary, because under the Bill the professional gambler can be punished wherever he carries on his operations. And there is a section of the Act of 1867 under which light but sufficient penalties can be imposed on ordinary players in places like highways. We have, however, altered the language of this section so as to give it a somewhat wider range in British Burma than elsewhere."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BURMA MUNICIPAL BILL.

The Hon'ble MR ILBERT also moved that the Report of the Select Committee on the Bill to amend the law relating to Local Self-government in British Burma be taken into consideration. He said:—

"This measure has been for some time before a Select Committee, and it will be seen that there are some considerable differences between the Bill

as introduced and the Bill as now amended. These differences are due mainly to three causes.

"In the first place, we have confined the scope of the measure to municipalities proper. The original Bill contained a provision inserted on the advice of the Chief Commissioner, Mr. Bernard, and of Mr. Crosthwaite when officiating in his place, which enabled the Local Government to include within the limits of a municipality not merely a town but also any tract of country adjoining a town. The object of this provision was to meet the requirements of certain rural tracts until such time as it might be found possible to establish a system of local boards for rural districts.

"But it appears from the papers which have been submitted to us that on fuller consideration the weight of opinion is against the attempt to include in one municipality urban and rural tracts, and that the difficulty of framing provisions suitable both to town and to country is greater than had been anticipated. Accordingly we have adopted Mr. Bernard's recommendation that the Bill be confined, like other Municipal Acts, to urban tracts, the matter of local government in rural tracts being left to be dealt with hereafter.

"In the next place, we have followed the precedent set in the new Panjáb Municipal Act by substituting for a power to make bye-laws about nuisances detailed provisions on that subject. We submitted for the consideration of the Chief Commissioner the clauses for that purpose which had been settled by the Select Committee on the Panjáb Bill; and it is with his full approval that they have been inserted with a few modifications suggested by local circumstances. There is, as in the Panjáb Act, a power to exempt a municipality from such of the provisions as may be considered unsuitable to small places.

"And, lastly, we have further availed ourselves of the labours of the Committee on the Panjáb Bill by adopting several of the modifications and additions which had been suggested and approved in the course of the long discussions on that Bill. Most of these amendments are of minor importance, and, as they are noticed in our report, I need not dwell on them now. I will only say that they have not been adopted without full communication with the Chief Commissioner.

"There is, however, one section to which, as it deals with a subject of some importance, and as it does not follow quite the same lines as the provisions on the same subject in other Municipal Acts, I ought to direct the attention of the Council.

"By a section in the original Bill municipal committees were required to make grants-in-aid to schools in accordance with rules made by the Local Government. For this we have substituted a section specifically appropriating to educational purposes the income from schools and all sums acquired by the committee or board for educational purposes, and further requiring the assignment for educational purposes of such sum annually, not being more than five per cent. of the gross annual income of the municipality, as the Local Government may direct. This section is, in the opinion of Mr. Bernard, indispensable for the purpose of carrying out the educational policy which has recently been established in British Burma, and under which municipalities, whilst relieved of police-charges, are required to provide for the maintenance of local schools. The same policy, as the Council are aware, has been carried out, or is in course of being carried out, in other parts of India, and the way in which it is carried out is usually to strike a bargain with the municipality and not to relieve it of its police-charges except on condition of its undertaking burdens for other objects. It may possibly be that, when Burma municipalities were relieved of their police-charges, sufficient care was not taken to impose a similar stipulation, or to make its meaning clear; but, however this may be, it appears from the papers which were laid before the Committee that in the case of one municipality practical difficulty has been experienced in securing the due appropriation of sufficient funds to educational purposes, and it is to meet difficulties of this kind that this section has been introduced."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

RANGOON WATER-WORKS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to confer powers and impose duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of Water in that Town.

PANJÁB COURTS BILL.

The Hon'ble MR. BARKLEY moved that the Report of the Select Committee on the Bill to amend the law relating to Courts in the Panjáb be taken into consideration. He said:—

"As little more than three months have elapsed since leave was given to introduce this Bill, I need not repeat the explanation I then gave of the

purposes for which it was proposed to alter the law relating to Courts in the Panjáb; but, before proceeding to notice the changes in substance which the Select Committee have made in the Bill, it may be well to mention, as there seems to have been some misunderstanding on this point in some quarters, that the reference in the preamble to the previous sanction of the Secretary of State was not intended to preclude discussion of the principles involved in the Bill, but only to show that, in continuing the jurisdiction of the Chief Court over European British subjects in capital cases, this Council would not be exceeding the limits placed upon its legislative powers by section 22 of the Indian Councils Act, 1861, and section 46 of the Statute of 3 & 4 Wm. IV, c. 85. Possibly the words were not necessary, as the jurisdiction in question was conferred on the Chief Court in 1866; but when the Act constituting the Chief Court, which was passed in that year, was repealed and this jurisdiction continued by Act XVII of 1877, the sanction of the Secretary of State was recited in the preamble of that Act, and we have followed the same course in the present Bill, lest the omission of the words should give rise to misapprehension.

"Coming now to the changes made in the Bill by the Select Committee, the only point I need notice in the preliminary chapter is the power which the definition of 'small cause' gives to the Chief Court, with the sanction of the Local Government, to add for the purposes of appeal other classes of suits to those which are made cognizable by Small Cause Courts by Act XI of 1865. A power of this nature was proposed to be taken in section 42 of the Bill as introduced, the reason being that, while it appeared desirable to divide suits into two classes for the purpose of determining the course of appeal, the definition of the suits cognizable by Small Cause Courts contained in section 6 of Act XI of 1865 did not form an altogether satisfactory basis for this division, and it was therefore thought expedient to provide a means of effecting the division on a different basis. It is probable that, when the Mufassal Small Cause Courts Act comes to be amended, it may not be necessary to retain this power; and in the meanwhile the definition adopted by the Select Committee indicates how the power is intended to be exercised by excluding those classes of suits in which the Presidency Small Cause Courts have not jurisdiction.

"In the chapter relating to the Chief Court, the principal change is that the proviso to the first sub-section of section 8 is now framed so as not to restrain the Chief Court from making rules allowing one Judge of the Court sitting alone to reverse any order within the meaning of the Civil Procedure Code.

This was thought more convenient than to specify in the Bill the classes of orders which a single Judge might or might not be allowed to reverse.

"Section 19 of the original Bill has been omitted, as it appeared to be sufficiently provided for by sections 25 and 647 of the Civil Procedure Code, and a change in the language of section 12 has made it unnecessary to retain section 32, while it was thought that section 33 and a part of 31 would find a more appropriate place in a Bill amending the Civil Procedure Code than in that now before the Council.

"In the chapter relating to the Subordinate Civil Courts, the designations of those Courts have been changed so as to meet the wishes of the Local Government and give effect to the suggestions of a number of the officers whose opinions on the Bill were invited. The District Judge appeared to be a more appropriate title than the Assistant Judge for the officer whose Court will be the principal Court of original jurisdiction in a district, and who will control the other Courts of the district and hear appeals from them in certain cases; and it was thought better to retain the title of Munsif, which is borne by a large number of the officers who preside over Courts of first instance, than to designate the Courts of these officers as Courts of Subordinate Judges of particular grades.

"With regard, however, to the importance of some of the functions which the legislature has vested in the District Court, which in other Provinces is the highest Court subordinate to the High Court, section 23 makes the Divisional Court for the purposes of the Indian Divorce Act the District Court for all districts comprised in the division, and enables the Local Government to direct that any other functions of the District Court of any district should be exercised by the Divisional Court. The Bill as introduced made the Divisional Court the District Court, but provided for cases in which the powers of the District Court might more conveniently be exercised by a local Court by enabling the Local Government to confer any of the powers of a District Court upon a Deputy Commissioner or Assistant Judge. Under the section as now framed the same result may be attained, though it will be reached by a different route.

"A more important change is that the Divisional Court may consist of one or more Judges, the Bill as introduced having provided for its consisting in all cases of two Judges at least. The constitution of Appellate Courts subordinate to the Chief Court and consisting of more than one Judge is an experiment to this extent at least that we have hitherto had no experience of how such Courts

may be expected to work; and, in addition to this, the sanction which has been given for the appointment of 13 Divisional Judges would not admit of the constitution of more than six Courts of two Judges each, unless some of the Judges are appointed in addition to other duties—an arrangement which may not always be found convenient. It therefore seemed desirable to give greater elasticity to the Bill by allowing a Divisional Court to consist of one Judge if, with reference to the circumstances of the case, the Local Government thinks this expedient or necessary. When it consists of more than one Judge, the Chief Court is enabled by section 21 to make rules for the exercise of the powers of the Court by one or more of the Judges, subject to a proviso similar to that which limits the exercise of the powers of the Chief Court by one Judge of that Court.

"As in the case of the Divisional Judges, the District Judge may be an officer holding that appointment in addition to other duties; for instance, the Deputy Commissioner of the district. This is necessary, as, while the scheme sanctioned by the Secretary of State for India provides 23 officers, any of whom, if considered fit to control the Subordinate Courts, might be appointed District Judge of one or more districts, some of the officers at present available for these appointments have not the training and acquirements which would admit of their being entrusted with advantage with the control of Subordinate Courts; and there are also some districts the judicial work of which is not enough to employ a separate District Judge, while they are not favourably situated for union with neighbouring districts for judicial purposes. As an instance of districts of this class I may mention Kohat, which is separated from Pesháwar, the district with which it has most affinity, by a pass situated in independent territory.

"The officers who could not be invested with controlling powers over all the Courts in a district will still be available as Subordinate Judges, and in addition to their original jurisdiction, which will be without limit as to value or amount, unless the Local Government thinks fit to impose a limit, they may be invested with the appellate jurisdiction of a District Court.

"The Chief Court is also enabled, by section 29, to authorize any District Court to transfer certain classes of proceedings which must be instituted before a District Court to a Court subordinate to it, and to withdraw them from such Court. The largest of these classes is that of applications for certificates for the collection of debts due to the estates of deceased persons—applications

which are very numerous in some districts and which in most cases relate to comparatively small amounts of money. A more important class, however, is that of applications relating to the guardianship of minors, which numbered 375 in 1883, more than one-third of this total occurring in four districts.

"A power has also been taken, which may be convenient in outlying tracts, such as Kulu, where sub-divisional officers are posted, for District Courts, with the sanction of the Local Government, to delegate to a Subordinate Judge certain powers of control and transfer of business.

"While we have abstained from dealing with the mode of determining the value of suits for purposes of jurisdiction, which, in cases relating to land, is often very different from the value assessed for the purposes of the Court-fees Act, we have added a definition of 'value,' declaring it, in accordance with what has always been held by the Superior Courts where the pecuniary limits of jurisdiction are in question, to be the amount or value of the subject-matter of the suit; and we have by section 32 enabled the Chief Court, with the previous sanction of the Local Government, to regulate the jurisdiction over suits the subject-matter of which does not admit of being valued in money, such as suits relating to marriage or divorce, and suits for injunctions and for some other kinds of specific relief. This will provide a means of preventing Courts of the lowest grades from adjudicating upon suits the question involved in which is really of great importance, though, as no money-value can be fixed, they cannot be said to be beyond the pecuniary limits of the jurisdiction; and, as is pointed out in the Report of the Select Committee, the course of appeal will also in some measure depend upon the directions which may be given under this power.

"One of the greatest changes in the law which was proposed in the Bill as introduced consisted in the restrictions which it put on the right of appeal; and no part of the Bill has given rise to more discussion both in the public Press and in the opinions which have been received through the Local Government. The effect of the provisions of the chapter relating to appellate jurisdiction, as it originally stood, was that both the second appeals allowed by the general law, and the further appeals given in certain cases by the Panjáb Courts Act now in force, were taken away, while the Judges of the Divisional Court were empowered to permit a further appeal to the Chief Court when they were unable to concur in the decree to be passed, or when some question of law of custom or of general interest was involved, if they thought the case of sufficient importance

to justify a further appeal. After considering the objections raised in various quarters to these restrictions upon appeals from appellate decrees, the Select Committee has come to the conclusion that a further appeal must be allowed as of right in certain cases, one of which, that of a Divisional Court consisting of a single Judge, was not contemplated in the original Bill. In this case a further appeal is given if the decree in the original suit is varied or reversed by the Divisional Court, unless when the original suit was a small cause not exceeding Rs. 500 in value. This differs from the present law only in fixing a higher limit of value than Rs. 50 for the small causes, in regard to which no further appeal is admitted. The further appeal when the Judges of the Divisional Court differ as to the decree to be passed is also given as of right, and not made subject to the permission of that Court; and a further appeal is also given in all suits exceeding Rs. 500 in value or which directly involve claims to property exceeding that value. In cases of smaller value, not being small causes, a Judge of a Divisional Court is still enabled to permit a further appeal to the Chief Court, when he can certify that a question of law or custom or of general interest is involved, and that the case is in his opinion of sufficient importance to justify a further appeal. A period of thirty days has been prescribed within which this certificate must be applied for, unless sufficient cause can be shown for not presenting the application within that period.

"The next chapter, which transfers to Revenue Courts the jurisdiction now possessed by the Civil Courts in certain classes of cases, has been objected to in some quarters, especially by members of the legal profession. This transfer was, however, recommended by a Committee which sat at Lahore in 1882, of which one of the Judges of the Chief Court was president, and several other officers of great experience, including another Judge of the Chief Court and the Financial Commissioner, were members; and they made this recommendation 'after careful consideration of the agency in the Panjáb best fitted for the disposal of suits relating to land.' Of the many Judicial and Revenue Officers whose opinions have now been obtained, only one has objected to the proposed transfer; and as the classes of suits specified are those which can be most satisfactorily dealt with by officers possessing revenue experience, and exercising authority in revenue matters, and the procedure will be the same as if they were tried in the ordinary Civil Courts, unless so far as the Local Government, with the previous sanction of the Governor General in Council, may by rule prescribe any modification of that procedure, the transfer of jurisdiction does not appear to be open to any serious objection, but on the contrary has a good deal to

recommend it. It is to be remembered also that it has not been proposed to deprive Tahsíldárs or Assistant or Extra Assistant Commissioners, by whom these cases will ordinarily be decided in the first instance, of their civil jurisdiction; and the officers trying the cases will therefore be officers who could have tried them if they had continued to be cognizable by the Civil Courts. The main difference then will be that the trial of these cases by officers possessing revenue experience will be secured, and that the appeals will lie to the superior Revenue authorities and not to Civil Courts of appeal.

"We have added one class of cases, namely, suits relating to boundary-disputes where the boundary has previously been determined by a Court or Revenue-officer, to those transferred to the Revenue Courts, as a local inspection is often necessary before such suits can be properly decided, and Revenue-officers in the course of their ordinary duties would have greater facilities for such an inspection than the more stationary Civil Courts.

"We have, however, qualified the transfer of jurisdiction by adding a power to the Local Government, after consulting the Chief Court, to direct that suits of any of the classes specified arising in any local area should be heard by the Civil and not by the Revenue Courts.

"We have also empowered the Local Government to bar appeals from the decrees of Assistant Commissioners in suits of certain of the classes specified when the claim is of a pecuniary nature and does not exceed one hundred rupees in amount, and no question of title or question the importance of which extends beyond the subject-matter of the particular suit is involved.

"Instead of section 49 of the original Bill, which provided for staying proceedings when a question of proprietary title or of the existence of the relation of landlord and tenant between the parties was involved, to enable the decision of a Civil Court upon the question to be obtained, as, on considering the criticisms which have been made on that section, there appeared to be objections to the course proposed, we have adopted a section (54) founded on section 208A of the North-Western Provinces Rent Act, 1881, but differing from that section in requiring the sanction of a superior Revenue Court to be obtained before a party is directed to sue in a Civil Court, and in not obliging the Revenue Court to decide the question against the party directed to sue if he fails to institute the suit within the time allowed for the purpose, though it is enabled to do so if it thinks fit. The first of these changes will furnish a check upon improper orders being passed under this section, such as an order directing

civil suit to be brought to decide a question which the Revenue Court might properly decide for the purposes of the suit before it, or directing a party to sue to establish his title to property when he might safely rely on his possession and leave any person contesting his title to sue him. The second leaves to the Court a discretion similar to that which it has under section 158 of the Civil Procedure Code. If, for example, the person directed to sue is advised that it would not be advisable for him to institute a civil suit within the time allowed for the purpose, he may apply for leave to withdraw the suit pending before the Revenue Court with permission to sue again, and that Court may then refrain from deciding the question and pass an order under section 373 of the Code. These changes to a great extent remove the objections which I felt to adopting the section as it stood in the North-Western Provinces Act, and there may be some cases, for instance, where a question of the fact or the validity of an adoption incidentally arises in a rent-suit, in which the power given by it will be useful.

"We have added another section (55) enabling the Financial Commissioner to make a reference to the Chief Court of the same nature as that which a subordinate Civil Court whose decree would be final may make under section 617 of the Civil Procedure Code. He will thus have the means of obtaining the decision of the Chief Court on difficult questions of law or usage having the force of law or of the construction of documents arising before him.

"We have not thought it necessary to retain section 58 of the original Bill, relating to the revisional jurisdiction of the Financial Commissioner, as he will have the powers of revision given by Part VII of the Civil Procedure Code in all cases falling under this chapter. It must be remembered that this chapter does not deal with all revenue jurisdiction, but only with jurisdiction in cases transferred by it from the Civil to the Revenue Courts; and, therefore, though a more extensive revisional authority may be required in some revenue-proceedings, it is not necessary to provide for this in the Bill now under consideration.

"Section 52, which provides for the appointment of a second Financial Commissioner and the distribution of business between the persons appointed to that office, is the only one which applies to any other business than what is cognizable by Revenue Courts under this chapter, it being necessary to arrange for the distribution of all the business of the Financial Commissioner when two officers are appointed to that office.

"We have not thought it necessary to retain section 63 of the original Bill, relating to consultations between the two Financial Commissioners, as, though such consultations may be useful to prevent the risk of conflicting decisions, there is no legal difficulty in the way of their being held when it appears advisable.

"The sections relating to special Settlement Courts, which have been placed in a separate chapter, as they provide for the transfer of the jurisdiction both of Civil and of Revenue Courts, are substantially unchanged.

"In the concluding chapter, the first section which calls for notice is section 70, which in part takes away the wider revisional jurisdiction given by section 622 of the Civil Procedure Code as amended in 1879 and re-enacted in 1882. No such restriction was contemplated when the Bill was introduced, it having then been thought that the extension of the revisional jurisdiction went far to render the second appeals given by the Code of Civil Procedure unnecessary, and that the main question was how far the further appeals given by the local law could be restricted. The effect of the Bill as introduced, so far as second appeals under the Code were concerned, would therefore have been to substitute a power of revision in the discretion of the Court for a second appeal as of right, and the only restriction which it was proposed to place on applications for revision, which, as had been pointed out by the Committee which sat at Lahore in 1882, were often unnecessarily made, was to increase the court-fee chargeable on the application when the value of the matter in dispute exceeded twenty-five rupees.

"It was pointed out, however, that very different views of the scope of section 622 as amended in 1879 had been taken by the High Courts of Bombay and Allahabad, and that, as the Bill would increase the number of possible applicants for revision, not only by the number of persons deprived of a second or further appeal to the Chief Court, but also by the number of persons deprived of a further appeal to a Commissioner's Court, there were serious objections to relying upon section 622 as a substitute for the second appeals now allowed by law, while any modification in the direction of the wider interpretation might have the effect of giving what would be practically equivalent to a second appeal in cases where the law does not at present allow a second appeal.

"The result, indeed, of the modification made in 1879 had been greatly to increase the number of applications for revision, which rose to 707 in 1883,

from about half the number in 1878, and are, it is understood, still continuing to increase.

"It was suggested by Mr. Justice Plowden, the Senior Judge of the Chief Court, with, I believe, the concurrence of his colleagues, that it would be better to cut down section 622 to its original dimensions by omitting the words added in 1879, and to give further appeals in most of the cases in which an appeal from an appellate decree is now allowed, refusing them only where a Divisional Court had heard the appeal in a suit of the small cause class not exceeding Rs. 500 or at most Rs. 1,000 in value.

"The Select Committee, however, while it decided to give a further appeal in all cases exceeding Rs. 500 in value, was unwilling to allow appeals from appellate decrees in other cases as freely as at present; and, as the principal source of difficulty in interpreting section 622 was found in the power given to the High Court to interfere on the ground that the Lower Court had acted illegally, it determined to withdraw this power, without further amending that section. The result of course will be that, when a Court whose decree is final has decided contrary to some positive rule of law, but cannot be said to have erred as to a question of jurisdiction, or to have acted with material irregularity, there will be no power to interfere; and the section, therefore, can no longer be held to cover the same ground which is at present covered by the law of second appeal.

"The increase in the court-fee on applications for revision has been objected to in some quarters, but this was recommended by the Lahore Committee of 1882, and was approved by all the Judges of the Chief Court last year; and, though there may be something to be said for reducing the court-fee now charged on particular classes of suits in Courts of first instance, there seems to be no good reason why a person applying to the highest Court of the Province for an order varying or setting aside the final decree of a lower Court should be allowed to do so without paying more than the fee prescribed for an ordinary petition to the Court. The increased court-fee may be some check upon applications which are often made without sufficient grounds, and is unlikely to have the effect of preventing applications when a real grievance exists which a Court of Revision can redress. When the application is successful, the Court is also empowered to direct a refund of so much of the fee as it thinks fit.

"I may now proceed to refer to a few of the suggestions put forward by critics of the Bill with which we have not dealt.

"It has been suggested that power should be taken in the Bill to appoint a qualified native of India to the Chief Court. This suggestion must have been made under a misapprehension of the effect of the present law, which the Bill follows in this respect. The only qualification prescribed by law is that one of the Judges must be a Barrister of not less than five years standing, and there is no legal obstacle to the appointment of a Native Judge either to the Chief Court or to any other Court under the Bill when a vacancy exists. But the passing of the Bill will not create any vacancies. It will merely enable a certain number of existing appointments to be replaced by a similar number of new appointments, while the same officers must be employed.

"It has similarly been suggested that what ought to have been aimed at was an improvement of the Courts of first instance. That this is an object to be aimed at no one will be disposed to deny, though the defects of these Courts have certainly been exaggerated. But the improvement of these Courts, as of Courts of any other grade, must be gradual, and it has not been shewn that any legislation is needed for this purpose. What is required is strict supervision by controlling authorities and care in selecting fit persons for new appointments or for promotion to higher grades, and this no legislation can secure. So far as my own experience goes, I have reason to believe that improvement in these Courts has been going on and is likely to continue, and that for the last ten years there has been more reason to doubt the competency of some of the Courts of a superior grade for the functions which they are called upon to exercise than there has been to doubt that of the great majority of the Courts of first instance.

"Another suggestion has been that an appeal should be given from the order of one Judge of the Chief Court rejecting an appeal to the Court; but, though apparently any order of a single Judge of one of the High Courts may be appealed against, a Judge of one of those Courts may be empowered by rules not merely to reject appeals but to exercise any appellate jurisdiction vested in the Court, and there is no reason to believe that appeals from orders rejecting appeals are often preferred or entertained. And it would be by no means consistent with the restrictions we are putting upon appeals in other cases to give an appeal from the order of a single Judge of the Chief Court where no appeal has hitherto been allowed by law.

"When I explained the provisions of the Bill on moving for leave to introduce it, I did not think the occasion an appropriate one for expressing any opinion of my own on the various changes in the law which it

was proposed to make. Apparently this has led some of the critics of the Bill to assume that it was entirely in accordance with my own views. The Bill, however, was, as I stated at the time, based upon recommendations made by your Lordship's Government to the Secretary of State for India; and I think I may now properly mention that, before those recommendations were sent home, I had recorded my dissent from some of the proposals relating to the appellate system on which they were based. Though the provisions of the Bill on this subject have been modified in Select Committee to a much larger extent than under the circumstances I could have anticipated, and the changes made are in my opinion almost all for the better, I cannot say that it is even yet all that I could wish.

"I am aware of course that no member of a legislative body can expect to be able to get every portion of a large measure settled precisely in accordance with his own views, but at the same time I think it necessary to guard myself against being supposed to approve of all the changes in the law which this Bill will effect.

"I have never concealed my opinion that the constitution of the Divisional Benches proposed by this Bill involves a waste of power, and, though I look upon the greater liberty of appeal from their decisions now allowed as an improvement, this only makes the waste of power more apparent. As the Bill now stands, however, the Local Government will be at liberty to appoint a single Judge to the Divisional Court instead of a Bench, in any case in which it thinks proper to do so.

"A more serious objection to the Bill is that, having regard to the nature of the duties of the District Courts, whose appellate decisions are in cases of the nature of small causes made final, these Courts are at present as a class, notwithstanding individual exceptions, the weakest Courts we have, and any improvement in them must necessarily be gradual. Most of the Judges of the Chief Court had agreed to the proposal of the Lahore Committee that their decisions should be made final in small causes not exceeding Rs. 100 in value; but they are now made final in small causes not exceeding Rs. 500 in value. This, however, was agreed to by the Local Government last year after ascertaining the opinions of the Judges, and there was therefore no ground to hope for any change on this point, especially as second appeals in small causes not exceeding Rs. 500 in value are not allowed elsewhere in India.

"The finality in these cases in other provinces has, however, since 1879 been subject to a wider power of revision than will hereafter exist in the Panjáb; and the one respect in which I think the Bill has been altered for the worse is that, in amending section 622 of the Civil Procedure Code, that section was not made to cover cases where any substantial portion of the appellate decision is opposed to law or to any usage having the force of law. I presume that, where the Appellate Court has failed to determine any material issue of law properly raised before it, it will be held to have failed to exercise a jurisdiction vested in it, or to have acted with material irregularity. At the same time it is only because the right of appeal has been so largely restricted that I do not like the simultaneous restriction of the power of revision. I think that, if the suggestions for the improvement of the system of appeal made at a late stage by the Chief Court could have been accepted, section 622 might properly have been cut down to its original dimensions.

"It is no secret that one object of the recommendations made by your Lordship's Government last year was to reduce the work of the Chief Court. There seems to be an impression in some quarters that the Judges of that Court were opposed to this being done, and not merely to the particular plan which has been devised for the purpose. That this impression is mistaken is shown by the fact that the Judges in 1882 made proposals to effect the same object, which have been only partially accepted.

"I may be asked what the effect of the Bill as it now stands upon the work of the Chief Court is likely to be. My answer is that this cannot be foretold with much precision, but that the transfer of certain classes of cases to the Revenue Courts, which was originally proposed by some of the Judges, will certainly effect a considerable reduction. Of the appeals disposed of in 1883 nearly 12 per cent. related to occupancy-rights, one of the classes to be transferred, but nearly half of these belonged to a large group of cases from a single village. From information collected by Mr. Rivaz as to the classes of cases in which appeals were preferred to Commissioners and Deputy Commissioners in 1883, I gather that in 30 per cent. of the cases which, if the appellate system established by the new law had been in force, would have been appealable to Divisional Courts the appeal will now lie, if at all, to Revenue Courts. This may be above the average, and the same proportion may not apply to the appeals to the Chief Court after deducting those which will no longer lie, especially as most of these cases would be under Rs. 500 in value; but there will clearly be a

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substantial reduction from this cause of the number of cases in which an appeal would lie on certificate.

"Only 3 per cent. of the appeals decided by the Chief Court in 1883 were for money or moveable property not exceeding Rs. 500 in value, but there were at least 1,326 other cases (including of course a large proportion of the revenue cases) in which under the provisions of the Bill no appeal would lie to the Chief Court unless on certificate or when the Judges differ. This leaves at most 1,462 cases in which an appeal would lie as of right under the provisions of the Bill, and, as in 1883 disposals exceeded institutions, the number of appeals as of right in the course of a year would fall short of this. Some addition would be necessary for first appeals over Rs. 5,000 in value which would lie direct to the Chief Court instead of, as at present, to Commissioners, but many of these cases have hitherto come before the Chief Court as second or further appeals. On the other hand, there will no doubt be some increase both in references under section 617, Civil Procedure Code, and in applications for revision, as the number of final appellate decrees in the Lower Appellate Courts, and therefore the number of cases in which these references or applications may be made, will be largely increased by the provisions of the Bill.

"On the whole, while there is more certainty of a large diminution of work in the Chief Court owing to the transfer of jurisdiction in certain classes of cases to Revenue Courts, than there is of much diminution of work owing to the changes made in the law of appeal and revision, it may fairly be anticipated that there will be some decrease arising from each of these causes, and that the civil judicial business will be considerably reduced."

His Honour THE LIEUTENANT-GOVERNOR said:—

"This is now the third time within ten years that extensive and radical changes have had to be made in the general administration and the judicial machinery of this province. With the restoration of peace and good order after the mutiny, the rapid development of the country and the enormous increase of material wealth and prosperity that followed, it very soon became evident that the old non-regulation machinery was no longer able to cope with the demands upon it. From that time to the present day there has been a growing and recognized necessity, arising on the one hand from the general progress of the province and on the other from the ever-increasing elaborateness and precision of our laws, for a more complete separation of judicial from executive functions, and for a closer approximation of our general administration to the system prevailing in our older provinces.

"Unfortunately, every time the much-needed reforms in this direction have been attempted, financial difficulties have intervened to prevent the complete acceptance of measures which experience had shown to be desirable, and to preclude the establishment once for all of what the Secretary of State described as 'a vigorous executive and an efficient judicial service in one of the most important Provinces of India.' The consequence has been a resort to makeshifts and temporary expedients, with the result that, as I have said, we are now for the third time within ten years forced to review our whole judicial and administrative arrangements, and to make extensive and very important changes. I need not, in this Council, point out how detrimental to the welfare of the people, to the interests of the province and the Government, and to the efficiency of the Courts of Justice, the unsettlement and uncertainty of law, procedure and agency caused by such recurring changes must necessarily be.

"The measures recently sanctioned by the Secretary of State to which this Bill is intended to give effect, so far as the sanction of the legislature is necessary for the purpose, are a greater advance than has ever been made before. But it would be sanguine to expect they will effect all that is needed. On the face of them they are incomplete. The financial grant has on this occasion been very liberal. Still we must, I fear, admit in the present case also that the financial and administrative conditions, necessarily imposed, have once more forced us to be content with measures which, though on the whole a great improvement on the existing state of things, are not free from objection, and are not acceptable to many to whose opinion the greatest weight is deservedly attached both by Government and the public.

"While therefore I welcome this Bill and the executive measures out of which it has arisen as a great boon to the province, I think it inevitable that, ere very long, further steps will have to be taken to improve the Subordinate Courts and to effect a more complete separation between the judicial and executive agency than we have been able to attempt under existing conditions. I by no means concur in the sweeping condemnation of the Lower Courts in which some critics of this Bill have indulged. At the same time I am too well aware how much they need to be reformed and improved. Hitherto the Judges of these Courts, on whose shoulders the bulk of the judicial work of the province falls, have had no adequate career opened up to them; and of this one thing I am sure, that no great improvement in the quality of the Subordinate Courts is to be looked for until all obstacles are removed which intervene to bar the advancement of the Judges of these Courts from the lowest

to the highest judicial offices, from the humble but honourable post of Munsif to the Bench of the Chief Court itself. It is in my estimation one of the merits of this Bill that it creates no obstacles to such a career, and that, so far as its provisions are concerned, there is nothing to prevent Native Uncovenanted Judges who distinguish themselves by knowledge of law and by skill and intelligence in the interpretation and application of it from rising to the highest judicial offices in the Province. For reasons which it would be out of place to enter upon here, it has not been possible at present to do all in this direction I could have wished. But it is matter for congratulation that, in connection with the present measures, the Secretary of State has declared it to be competent to the Lieutenant-Governor, with the approval of the Government of India, to appoint to district judgeships Natives in the Uncovenanted Service who show such eminent merit as to warrant giving them special promotion; and it is my intention to make a recommendation to the Government of India accordingly shortly after this Bill becomes law.

"As regards the details of the Bill, it is perhaps unnecessary that I should detain the Council with any remarks. The hon'ble the Law Member and my hon'ble colleague in charge of the Bill can speak on these with greater weight and authority than I can pretend to do. It will be sufficient for me—with reference to the very strong, and, I may say, for the most part valid, objections raised to the provisions of the original Bill, which largely curtailed the right of appeal—to express my satisfaction that the Bill has been so materially modified as substantially to meet the most important of those objections, and to state my opinion that, in this respect, the Bill as it now stands meets the reasonable requirements of the case."

The Hon'ble MR. ILBERT said:—

"It was hardly to be expected that a measure which reorganizes the Civil Courts of a province, and which affects, or may be held to affect, the interests of a profession which is nothing if not critical, should pass without a good deal of unfavourable criticism; and this Bill has met with its fair share of criticism, favourable and unfavourable. Much of the criticism has been very sound and useful, and we have thankfully availed ourselves of it for the purpose of making alterations in the Bill which I hope and believe will be found to be material improvements. But some of it has been directed not against the detailed provisions of the Bill but against its principles, and has embodied proposals which we found ourselves unable to accept.

"Now this is not the proper stage for discussing the principle of a measure before the Council; but, with reference to some of the observations which have reached us since the date on which this Bill was referred to a Select Committee, I may be permitted to remind the Council what the objects of this measure are, and what were the circumstances and conditions under which the general scheme of administrative reorganization of which this Bill only forms a small part was framed and brought forward.

"The main objects of this Bill are, I take it, two. One is to effect a further separation between executive and judicial functions than exists at present in the province. The other is to improve the machinery for administering justice in the Civil Courts.

"Now, we have been told that in separating executive from judicial functions under this Bill we have not gone far enough, and that we have left to the Revenue Courts classes of business which might more appropriately and satisfactorily be disposed of in the ordinary Civil Courts. To this objection there are several answers. In the first place, we were afraid to heap more work on the Civil Courts, which are already overburdened. In the next place, many of the questions which we leave to the Revenue Courts, such as questions relating to the enhancement of rent, are only of a quasi-judicial character, and all of them require for their satisfactory determination knowledge of a kind which Revenue and Settlement Officers may from their peculiar experience be specially expected to possess, and which the Judges of Civil Courts would not always—perhaps do not as a rule—possess. Then, if we have not gone quite so far as some of our friends would wish us to go, we have at least made a very great step in advance, and have assimilated in principle the system of judicial organization to that which prevails in what are known as the regulation provinces. And, lastly, we have inserted in the Bill a provision enabling a still further step to be taken if it should be found practicable and expedient to take it. I refer to the provision in section 45 which enables the Local Government to transfer certain classes of suits from the cognizance of the Revenue Courts to that of the Civil Courts.

"It must be borne in mind that this process of separating executive and judicial functions is a process which can only be carried out by gradual advances. In the earliest stage of a province like the Panjáb it is, as my hon'ble friend Mr. Barkley pointed out in moving for leave to introduce this Bill, inevitable and indispensable that large powers of various kinds should be

concentrated in the hands of the same officer; as time goes on a further separation of functions becomes practicable and expedient; but even in the most advanced provinces we are hampered by serious financial and administrative difficulties in our efforts to give full effect to a principle which is, and I hope will always be, steadily kept in view.

"I now turn to the proposals for reorganizing the Civil Courts. And, in dealing with this branch of the subject, I must admit that our critics have one enormous advantage over us. They are not tied and fettered as we, the members of the Executive Government, are, by sordid considerations based on money. They are free to suggest and advise whatever they think best, and to criticize unsparingly anything which falls short of their standard of excellence. We are in a much less fortunate position. We are not living in a Republic of Plato, but in a country with limited resources. We have to cut our coat according to our cloth, and in providing an outfit for a province like the Panjáb the material at our disposal is not superfine broadcloth, but homely *patu*, and a scant supply of that.

"Let me remind my hon'ble friend Mr. Barkley and those other gentlemen who did me the honour of attending last autumn a conference on the scheme out of which this Bill arose, and whose valuable assistance on that occasion I take this opportunity of most thankfully and gratefully acknowledging—let me remind them what was the problem which we had to face, and what were the conditions under which we were allowed to approach it. The main fact with which we had to deal was that the Chief Court was hopelessly encumbered with work, and I may add that a very great part of the work with which it was encumbered was of an extremely petty character. And the problem was how to relieve them of their excess of work. But we did not approach this problem as free agents. We did not hold the purse-strings. We had behind us an authority, indeed two authorities, which dictated to us the maximum amount which we were to spend, though they left us considerable liberty within those limits. Those authorities were the Finance Department and the Secretary of State. I may remark in passing that the part which my hon'ble friend Sir Auckland Colvin, or whoever happens for the time being to hold his office, usually plays in the legislative discussions over which I have the honour to preside is the useful but not always popular part of Jorkins. I hope, however, he will not suppose that by ascribing to him this part I wish to shift exclusively on to his shoulders the responsibility for resisting popular proposals on economical grounds. There is no country in the world where it is more

difficult to resist pressure for increased administrative expenditure than India; there is no country in the world where it is more important to resist that pressure. Our principal advisers are energetic and enthusiastic officials, sincerely anxious to do good and honest work, but crippled at every turn by the want of means. But the great mass of tax-payers is unrepresented, and the resources on which we can draw are limited and inelastic. Therefore, when the Finance Minister of the day takes a firm stand on economical grounds, he may always count on my honest support.

"Well, to return to our problem. There were before us two modes of relieving the Chief Court from its pressure of arrears. One was to increase its staff, the other was to reduce its work. A temporary addition had already been made to the numbers of the Chief Court, but we were told that a permanent increase was not under existing circumstances admissible, at all events (for I presume that this qualification may be inserted) not until other modes of relief had been tried and failed. As I have said, I do not wish to cast the responsibility for this decision exclusively on the Finance Department nor on the Secretary of State. There are obvious objections to increasing an expensive structure in its most expensive part. And you do not always add to the efficiency of the controlling authority by increasing its numbers. His Excellency the Commander-in-Chief will bear me out in saying that you may have too much even of that valuable commodity—Generals. I know it has been said that there ought not to have been any financial difficulty in the matter, because the accounts of the administration of justice in the Panjáb show a balance of receipts over expenditure, and that balance was enough to provide an adequate solution of our problem. Now, I do not know how far we can rely on the calculations which have been made as to this excess of receipts over expenditure, but I am quite willing to admit that I do not consider a surplus from court-fees a satisfactory source of revenue; and if my hon'ble friend Sir A. Colvin can see his way to dispense with it or to devise a satisfactory substitute for it, he will earn the gratitude of the country. But the practical question is, under existing circumstances, not whether this particular branch of Panjáb revenues shows a surplus, but whether on the Panjáb revenues as a whole there is such a surplus as would suffice for the extra expenditure which we wanted to meet. And I am afraid that His Honour the Lieutenant-Governor would reply—I see that he does reply—to this latter question with an ominous shake of the head.

"This then was how matters stood. Our mode of relief was negatived on financial grounds, and we had to make the best we could of the other mode. Not a satisfactory position you may say, but after all not worse than

that of the hard-worked administrators all over this country who are daily engaged in the thankless task of making bricks without straw.

"How then were we to check the flow of petty appeals which was deluging the Chief Court? Few subjects have been more exhaustively discussed in India than the system of appeals, and we were not likely to be able to add much to all that had been said or written on the subject. On one or two matters of principle we were all pretty well agreed. One was that partial appeals were objectionable, and that where an appeal was granted the Court ought to be in a position to deal with the whole case. On the number of appeals which should be allowed in the same case there was less agreement. One appeal we agreed should always lie in ordinary cases, but no one ventured to defend on principle the present system of the Panjáb, which has been aptly described as 'sifting cases through a succession of bad Courts in the hope that they will come right in the end,' though there were some who were sceptical about the possibility of substituting anything better under existing circumstances. But all were agreed that, if greater finality was to be given to the decisions of Courts of First Appeal, something must be done towards strengthening those Courts. How then were they to be strengthened? The only feasible scheme that was suggested was to make provision for enabling an Appellate Judge to call in a colleague to his assistance—in fact, to provide for the constitution of Appellate Benches; and this was the suggestion which was ultimately adopted. The proposal has, as is natural enough, been a good deal canvassed on grounds good, bad and indifferent. Among the latter I may be permitted to class certain arguments which have a false mathematical ring about them. For instance, we have been told that as two negatives do not make an affirmative, so two unsound judges do not make a sound one, and again that the notion that greater aggregate power will result from the adoption of our proposals is almost on a par with the idea that the product of $\frac{1}{2} \times \frac{1}{2}$ is an increased quantity. I have myself far too much respect for Panjáb Judges to speak of them as negative or even as fractional quantities, and I do not quite know what would be the effect of multiplying one Judge by another. But, I suppose, I may safely assume that in the Panjáb as elsewhere the product of $1+1$ is an increased quantity, and, passing from the abstract to the concrete, that for a good many purposes two men are better than one. Do those purposes include the hearing of appeals? There are persons, whose opinions are entitled to much respect,—for instance, as you have just now heard, my hon'ble friend Mr. Barkley,—who will tell you that they do not, and that

if you place two Judges to sit together one of them will content himself with saying ditto to the other. I have often heard this opinion expressed by Indian Civilians, and not the least competent among them; and it may perhaps be accounted for in their case by the fact that the training and experience which form and develope their most valuable qualities, the necessity which they are constantly under of acting alone and on their own responsibility, makes them less inclined to sit and act—perhaps less fitted to sit and act—in consultation with others. They undervalue the assistance with which they have learnt to dispense. There must, one would think, be some special reason for the prevalence of this opinion among Civilians, for there is certainly a very general prejudice among lawyers—a prejudice which I myself share—in favour of having appeals disposed of by a Bench. There may be Judges so strong as to need no assistance from a colleague, or so opinionated as to be incapable of deriving assistance from him, or so weak as to be unable to assert their own opinions against him, or so indolent as to let him bear their share of the work. But, taking the ordinary run of men, say Tom, Dick and Harry, who are neither much better nor much worse than their neighbours, or, I will add, than each other, I believe that an appeal from Tom to Dick and Harry sitting together is more satisfactory than an appeal to Dick or Harry sitting alone. It is more satisfactory to the suitor, who, if the decision is reversed on appeal, feels that the view which has prevailed is at all events that of the majority. It is more satisfactory to the Judge of first instance, who will often think, and may be entitled to think, that his own opinion is as good as the unaided opinion of the Judge above him. It is more satisfactory to the Court of Appeal, whose members have the advantage of consulting each other and clearing their minds by mutual argument before overruling the Court below.

"I believe then that if Benches can be satisfactorily constituted for hearing first appeals, it is desirable to constitute them. Can they be so constituted in the Panjáb? That is a question which it is rather for the Lieutenant-Governor to answer than for me, and it is a question which I understand—he will correct me if I am wrong—he has unhesitatingly answered in the affirmative. The provision under which Benches may be constituted has, as Mr. Barkley has pointed out, been given an experimental form, and I think that the experiment is, to say the least, worth trying.

"Having constituted the Courts of First Appeal, whether by Benches or otherwise, in what cases and to what extent should finality be given to

their decisions? That is an extremely difficult question. I am aware that the Chief Court has won, and deservedly won, the confidence of the people of this province, and that any limitation on the right of access to it is not likely to be popular. I am aware also that the Chief Court is gradually doing a most useful and important work in comparing with each other the numerous laws and customs or alleged customs which come before it from different parts of the country, and in endeavouring to ascertain and formulate the common principles which underly their apparent variety. They are doing in this way the work which was done for England some six centuries ago by the King's Court,—the *Curia Regis*,—and by means of which the common law of England has been developed into a logical and consistent whole. For these reasons I am reluctant to limit the right of appeal to the Chief Court, especially in cases which involve important questions of law or custom. On the other hand, it must be borne in mind that the great mass of the cases which come before the Court—a large proportion I believe of those which under the existing system find their way up to the Chief Court—are of the most petty and simple description, involving no important question of law or custom whatever, and requiring for their disposal nothing more than a little common sense and patience. Having regard to the means at our disposal, are we justified in allowing the time of the most expensive Courts to be occupied with cases of this description? As has been often said, no man has a right to unlimited draughts on judicial time and judicial power. To grant an unlimited right of appeal is not fair to the general tax-payer, and is a cruel kindness to the suitor himself. I am told by those on whose authority I am entitled to rely that among many classes of the Panjáb it is a point of honour to prosecute an appeal, however hopeless may be the case and however trifling may be the stake, to the utmost, and notwithstanding the knowledge that even if the appeal is successful the costs to be paid will far outweigh the stakes. The unsuccessful suitor feels himself disgraced if he does not carry his appeal as far as the law will allow him to go, and it is not until recently that he has, with the help of his legal advisers, found out how very far that is If the law would in such cases interpose a friendly obstacle to his further progress in the path of appeal, his honour would be satisfied and his pocket would be benefited.

"I hold then that we are justified, both in the interest of the general tax-payer and in the interest of the particular suitor, in placing some limitation on the right of second appeal, and that this limitation may reasonably be framed with reference both to the nature of the suit and to the value of its

subject-matter. About the particular limits to be selected there will naturally be much difference of opinion. The Committee have concurred with the view of the Local Government that the limitations on the right of further appeal proposed by the original Bill probably exceed the real requirements of the case, and it will have been seen that we have proposed to make some very important extensions of that right beyond the limits so fixed. In the case of ordinary money-claims, suits of the class called in the Bill small causes, where the value does not exceed Rs. 500, we think that one appeal should suffice, and that there should be no further appeal. In this, as Mr. Barkley has reminded us, we only follow the general law as laid down by the Civil Procedure Code for the rest of the country. In other cases we make the right of second appeal depend on the value of the suit and on the constitution of the Court by which the first appeal is heard. If the value exceeds Rs. 500, there is an absolute right of further appeal. If the Appellate Court consists of a single Judge, and he reverses or varies the decision of the Court below, then, there being one Judge against one, there is a further appeal. If, again, the appeal is heard by a Bench of two and the two do not agree, there is a further appeal. And, lastly, any one of the Judges composing a Bench may certify a case for appeal if in his opinion there is a question of law or custom or of general interest involved, and the case is of sufficient importance to justify a further appeal. We hope that this power will be exercised in such a way as to allow of all really important cases of law and custom finding their way up to the Chief Court.

"But, having settled the limitations on the right of appeal, we had to encounter another formidable difficulty. We were told that any limitation which might be imposed on this right would be illusory, because in cases where an appeal was barred a way would be found to the Chief Court under section 622 of the Civil Procedure Code, which provides for revision of the proceedings of inferior Courts. Now, it certainly was not the intention of the framers of that section that it should simply give a right of appeal in another form; but there is some reason for believing that the words which were inserted in the section in 1879 have obscured the line which was originally drawn between the class of cases in which an appeal was to lie and the class of cases in which the power of revision was to be exercisable. On referring to the Report of the Select Committee which inserted those words I find that they did so with some hesitation, for they remark—'The change is a serious one, and must be understood as made tentatively.' These doubts have been justified by the difficulty which some of the High Courts have found in interpreting the addition.

Thus, the Allahabad High Court has construed the new words in such a way as would, if it were logically carried out, render nugatory any limitation on the right of appeal. The most careful consideration to which they have been subjected has been in the Bombay High Court, where Mr. Justice West in a very recent judgment has gone into the subject with all the thoroughness which characterises his work, and has drawn a useful and instructive comparison between the revisional jurisdiction of the several High Courts and the analogous superintending and visitatorial jurisdiction exerciseable by the English Court of Queen's Bench, and its successor the High Court of Justice, under the prerogative writs of certiorari, mandamus and prohibition. Whilst insisting, very properly, on the necessity for such a jurisdiction, he remarks on the tendency which has manifested itself in recent times to confine its exercise within somewhat narrower limits than heretofore.

'In India, as in England,' he says, 'the grant of a rule under the extraordinary jurisdiction is discretional, and the power should be used only to sustain, and not further to disturb, the regular course of judicial administration, to prevent distortious or sham applications of the law, but not to promote uncertainty and restlessness, by an over-nice scrutiny of proceedings that aim at promptness rather than refinement.'

"He wisely abstains from an attempt to define precisely cases in which the power ought to be exercised, for, as he says, 'what is abnormal cannot be provided for precisely by rules'; but he makes it clear that in his opinion the jurisdiction under section 622 of the Code is an extraordinary jurisdiction, to be exercised only in extraordinary cases, and he lays down certain general principles as a guide to the discretion of the Court in exercising it. It is evident, however, that the word 'illegally' as used in the section has been a stumbling-block to him, and that he has found some difficulty in reconciling its presence with what he conceives—and, if I may venture to express an opinion, rightly conceives—to be the general scope of the jurisdiction exercisable under the section. For, as he says, 'in one sense every erroneous decision or order is illegal;' in other words, every slip on a question of law or fact would justify the interference of the High Court. which is very much the view that was taken by the late Chief Justice of the Allahabad High Court.

"Now, of course this judgment is not binding on the other High Courts, but it is the most instructive and exhaustive exposition that is to be found of the section with which we are dealing, and it is certain to be referred to whenever

the meaning and intention of the section comes up to be considered in the Panjáb Chief Court or elsewhere.

"The limitations which we have considered it necessary to place on the right of appeal in the Panjáb make it eminently desirable that we should if possible prevent the revision section from being interpreted in such a way as to make those limitations nugatory. We have very carefully considered whether and how this can be effected; and the conclusion to which we have come is that we ought to strike out the word 'illegally' on which the advocates of the wider interpretation mainly rely. It is impossible to predict how a section which is of necessity expressed in wide and general terms will in practice be interpreted, but we believe that the omission of this word will materially facilitate the adoption of those views as to the scope and intention of the section which are to be found in the judgment of Mr. Justice West.

"I am sorry to have had to detain the Council so long on such a dry and technical subject, but I was anxious to show that we had not overlooked or made light of the serious difficulties which surround the subject with which we have had to deal.

"In conclusion, I will only say that I hope this measure will be accepted as what it is, namely, an honest endeavour to improve the administration of civil justice in the Pánjab to the extent to which our existing means allow us to improve it. It is an essential part, but only a part, of a much wider scheme for improving the administration of the province—a scheme which has been under consideration for many years, which makes reforms that are, and long have been, urgently required, but the introduction of which, if we were to wait until all possible objections to each of its features were removed, would be deferred until the Greek Kalends, or whatever day corresponds in the Indian calendar to that fleeting date."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY moved that in section 48, clause (*b*), for the words "amount or value of the subject-matter of the suit" the words "value of the suit" be substituted.

He explained that no previous notice had been given of this amendment, but that its object was merely to make an improvement in the language of the section which did not affect its substance in any way, the definition of "value" which had been added to section 3 having rendered the retention of the longer expression unnecessary.

The Motion was put and agreed to,

1884.] [*Mr. Barkley.*]

The Hon'ble MR. BARKLEY also moved the following amendments which he explained were necessary to make the law as to the court-fees payable on applications for revision under section 622 of the Civil Procedure Code the same in the Court of the Financial Commissioner as in the Chief Court :—

(1) That in section 71, after the words "Chief Court" the words "or the Court of the Financial Commissioner" be inserted.

(2) That in section 72, the word "Chief" be omitted.

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 9th October, 1884.

SIMLA ;
The 9th October, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Govt. C. B. Press, Simla,—No. 521 L. D.—10-10-84.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Thursday, the 9th October, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble D. G. Barkley.
The Hon'ble J. W. Quinton.
The Hon'ble H. J. Reynolds.

RANGOON WATER-WORKS BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to confer powers and impose duties on the Municipal Committee for the Town of Rangoon in respect to the construction and maintenance of Water-works and the supply of Water in that Town be taken into consideration. He said:—"The only important alteration made by the Select Committee in the Bill is the omission of the financial clauses. The Committee agree with the Chief Commissioner in thinking that the arrangements for the imposition of a water-rate and for the constitution and management of the water-supply fund can be more conveniently dealt with under the financial sections of the recently passed Municipal Act than under the separate sections which it was originally intended to insert in this Bill."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 2, clause (1), of the Bill the words "and includes the Cantonment of Rangoon and the Central

Jail" be omitted. He said that he was informed that the Chief Commissioner considered that these words were not necessary.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN SALT ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved that the Bill to amend the Indian Salt Act, 1882, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also moved that the second section of the Bill and the second recital in the preamble be omitted. He said:—

"The preamble as originally framed ran thus:—

'WHEREAS it is expedient to exclude the Province of Sindh from the operation of those portions of the Indian Salt Act, 1882, which do not extend by their own operation to the whole of British India;'

and then it went on to say—

'Whereas it is also expedient to remove certain doubts which have been raised as to the meaning of the words 'importation of salt' in section 27 of the same Act, &c.'

And the second section of the Bill was as follows:—

'For the word 'importation' in section 27 of the same Act, the word 'bringing' shall be substituted.'

"The object of these words in the preamble, and in the second section of the Bill, was, as explained in the Statement of Objects and Reasons, and by me at the introduction of this Bill, to remove a doubt as to the meaning of section 27 of the Act, raised by a ruling of the Chief Court in Sindh, which had held that the words 'importation of salt' in that section covered only the bringing in of salt as merchandise for the purpose of commerce and in merchantable quantities; but did not apply to small quantities brought for other purposes. Since the introduction of the Bill, however, it has been brought to the notice of the Government of India that the Chief Court in deciding the later case of the *Crown* v. *Imambux Haji* gave reasons for holding that it

1884.] [*Sir A. Colvin.*]

would no longer be safe to act on the opinions expressed in the earlier decision; and that importation of salt includes the bringing of salt into British India in the smallest quantities. In other words, the later ruling of the Chief Court in Sindh has annulled the former, and cleared up any doubt that may have existed, and which it was the object of this section (2) to remove, thereby making the section unnecessary."

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 23rd October, 1884.

SIMLA;
The 15th October, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

G. C. B. Press, Simla.—No. 564 L. D.—15-10-84.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, Simla, on Thursday, the 23rd October, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.
The Hon'ble H. J. Reynolds.

PANCH MAHÁLS LAWS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the law in force in the Pánch Maháls. He said:—"This Bill has been prepared at the request of the Government of Bombay. The territory known as the Pánch Maháls is at present one of the scheduled districts in that Presidency, and the object of this measure is to regulationize it and to assimilate the law in force in it to that in the neighbouring Kaira district."

The Motion was put and agreed to.

OUDH ESTATES ACT, 1869, AMENDMENT BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to amend the Oudh Estates Act, I of 1869. He said:—

"This legislation is undertaken at the instance of the Government of the North-Western Provinces and Oudh, and of the associated body of the Oudh taluqdárs known as the British Indian Association.

"Act I of 1869 defines the rights of taluqdárs and others in certain estates in Oudh, and regulates the succession thereto. Sections 13 and 20 empower taluqdárs to make bequests of their estates under certain circumstances by wills executed not less than three months before the death of the testator, and registered within one month from the date of their execution. In the Preliminary chapter, 'registered' is defined to mean registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh.

"The practice which has since obtained among Oudh taluqdárs making a will under the Estates Act is to deposit the will in a sealed cover with the registrar; and until lately it was believed that this was all that the law required.

"In 1882, however, a case came in appeal before the Court of the Judicial Commissioner, in which—although the point was not put in issue in the Court of first instance—the Judicial Commissioner held that a will so deposited was invalid, so far as it affected the landed estate, because it had not been registered.

"This judgment was appealed to the Privy Council. Their Lordships ruled that the Judicial Commissioner was right; that under the rules of Act VIII of 1871—the Registration Act applicable—deposit was one thing and registration another; and that a will deposited under the provisions of that Act relating to the deposit of wills was not thereby registered within the meaning of the Oudh Estates Act.

"The Government of the North-Western Provinces and Oudh now urge that the consequences of this ruling are most important, since the procedure that it pronounces to be inadequate has been constantly acted on; and the President of the British Indian Association, in a memorial to the Lieutenant-Governor and Chief Commissioner, asserts that the taluqdárs were never led either by the civil officers or the legal advisers whom they consulted in such matters to suspect that the validity of wills formally deposited in the registration offices under sealed covers could be called in question.

"It is obvious that taluqdárs cannot be expected in future to register their wills open. If this be insisted on, sections 13 and 20 would probably remain a dead-letter.

"Under these circumstances, it is considered advisable to amend Act I of 1869 so as to legalize the existing practice. This is done by the present Bill, and, as the omission to fulfil the requirements of the law which has taken place in the past would seem to have been unintentional and due to a prevalent and hitherto undisputed misapprehension of its meaning, retrospective effect has been given to the amendment, which covers all wills hitherto or at present only deposited and not registered, except wills already declared invalid by judicial decision or being questioned in a suit commenced before the date of the introduction of the Bill."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

EXCISE ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. QUINTON also moved for leave to introduce a Bill to amend the Excise Act, 1881. He said:—

"The Act is itself an Act to amend the law relating to the excise-revenue in Northern India, British Burma and Coorg. The few remarks called for at this stage of the Bill have reference, I would explain, to the North-Western Provinces and Oudh, but, should the Motion be accepted, the other Local Governments to whose territories the Bill is applicable will be given an opportunity of expressing their opinions upon it before the Council is asked to pass it into law.

"It has been prepared, at the instance of the Government of the North-Western Provinces and Oudh, in order to legalize a practice, which has prevailed in those Provinces since 1856, of employing officers of Police above a certain rank as Excise-officers for the prevention of smuggling. With the other branch of the excise-administration, namely, the collection of revenue, Police-officers have no concern whatever.

"Act X of 1871, which consolidated and amended the excise law in Northern India, British Burma and Coorg by its 46th section, corresponding to section 59 of Act XXI of 1856, enabled the Local Governments to confer on officers of the Police Department powers with respect to the seizure of, and search for, spirituous and fermented liquors and intoxicating drugs of every description, and the arrest of persons found in possession thereof. This power has been fully exercised up to the present time, and on it the Government has to rely for the prevention of smuggling, as no separate establishments are entertained for that purpose. Formerly a functionary styled the Ábkárí Dárogha was maintained in each district, but he was found to be more ornamental than useful, and after mature deliberation his office was abolished.

"No doubt as to the legality of the practice arose till a short time ago, when a decision in a criminal case by the Judge of Agra led the Government to look closer into the question, and it then appeared that under the law now in force it was open to argument whether Police-officers could be employed on excise-duties.

"That law, Act XXII of 1881, purported, as I have said, to amend the law relating to the excise-revenue in Northern India, British Burma and Coorg; and its sixth chapter, which treats of officers and their powers, has no provision corresponding to section 46 of Act X of 1871 and section 59 of Act XXI of 1856, to which I have already referred. Section 2 of the Act, it is true, saves all powers conferred under the Excise Act of 1871, but it has been held that this must be read with section 20 of the Police Act, which prohibits the exercise of any authority by Police-officers other than that therein specified, and that nothing short of an Act of the legislature can now legalize their employment as Excise-officers.

"It may be asked, how it comes that so important a point was overlooked for so long by the Government of the North-Western Provinces and Oudh? The answer is that such an effect of Act XXII of 1881 was neither intended nor foreseen when that Act was passed.

"The Statement of Objects and Reasons makes no mention of any alteration of the law as regards the excise-functions of Police-officers; it is not alluded to in the speeches of the Hon'ble Member in charge of the Bill—the then Legal Member; and the Report of the Select Committee is altogether silent upon it. Mr. Whitley Stokes did not include it in the substantial alterations made by the Bill, and appears to have thought that it was a matter to be regulated by executive order, and that any legislative provision on the subject was superfluous. As occasionally happens, an effort to attain brevity brought about obscurity.

It is impossible to suppose that a power on which Local Governments mainly relied for preventing injury to the excise-revenue by smuggling was thus taken away by a side wind, or that, if this result of the Bill had been contemplated, it would have been allowed to pass without comment from the Governments affected by it while the Bill was being carried through Council.

"The Bill on the table merely restores to Local Governments the power which they possessed under the previous law, which some of them at least have been exercising up to the present time in the belief that they had never been deprived of it."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette*, the *Panjáb Government Gazette*, and the *Central Provinces* and *British Burma Gazettes* in English and in such other languages as the Local Governments think fit.

His Excellency THE PRESIDENT:—"I should like to ask one question with regard to the Bill. I understand from the remarks of Mr. Quinton that the Bill has been introduced at the request of the Government of the North-Western Provinces and Oudh. I suppose that it will not be extended to the Panjáb, the Central Provinces or British Burma unless the Governments of those Provinces desire that it should be so extended?"

The Hon'ble MR. QUINTON:—"The draft Bill does not provide for that."

His Excellency THE PRESIDENT:—"You mean that before the Bill passes out of Select Committee and comes on finally in Council the views of those Governments will be received?"

The Hon'ble MR. QUINTON:—"Yes, my Lord; certainly."

The Motion was put and agreed to.

INDIAN RAILWAYS BILL.

The Hon'ble Mr. Hope moved for leave to introduce a Bill to amend and consolidate the law regulating the construction and working of Railways. He said:—

"We have at present, as the Council are aware, a certain amount of law relating to railways. This law, however, may be said to be not only of a very

scant and meagre nature, but also to relate almost exclusively to the actual conditions of the working of railways as between the Railway Companies and the public; that is to say, it chiefly relates, speaking very broadly, to various acts on the part of one or the other, all of which conduce more or less to the satisfactory carrying on of the railway business from day to day. Besides this, however, there are many other branches of the question which our law—I can only speak broadly in a sketch of this kind—does not touch at all. I may illustrate these branches by mentioning some of them, namely, the nature of the numerous obligations of a Company in constructing a line and also in working it, in order to ensure its safety and convenience; to secure due accommodation for landholders on both sides of the line and protection of their rights; to enforce proper enquiries into the various questions, or the accidents, which may arise; to regulate rates and fares so that the public shall not be at the mercy of the Companies as powerful monopolists; to provide for the systematic keeping of accounts in the interests both of the Government, which, I am sorry to say, still very often has to guarantee the Railway Companies, and also of the shareholders themselves. All these and various other matters, of more or less importance, have hitherto been provided for in the best way possible in the contracts between the Government and the Companies, or by departmental rules and regulations. As regards State Railways, however, such matters have been entirely within the discretion of the Executive Government. These contracts have been found in the course of years to be often incomplete or obscure; each new railway which has been established or guaranteed has got for itself a separate contract, the result being that there is a very considerable amount of difference in each regarding matters of the same nature, which ought to be dealt with uniformly in all cases. Besides this, we have been urged by several of the large Railway Administrations to introduce an Arbitration Act for the settlement of differences which occasionally arise between them, owing principally to the large increase in the interchange of railway traffic in India, which is likely still to develop further with the growth of our railway systems. Experience has also shown the necessity for a compulsory reference to arbitration in certain cases, where the continuance of disputes is likely to be prejudicial to the interests of the public.

"This is, I think, a general description of the Bill which I am moving for leave to introduce, sufficient to satisfy the Council that some legislation is desirable.

"As regards the further steps to be taken, I have only to say that it is not contemplated to introduce the Bill at the present time. The rough

draft of the Bill has been prepared in the Public Works Department, and all provisions in the existing contracts and in Indian Acts or English Statutes or Bills which appeared suitable have been embodied in it. What is contemplated is that this draft shall be referred to the various Local Governments, Chambers of Commerce and Railway Administrations throughout India before its introduction into the Council. I hope to be able, if the Council agree to the Motion now before them, to introduce a considerably amended draft in the course of the current session at Calcutta, after we have received and considered the various opinions which are to be called for on the measure in the manner I have indicated."

The HON'BLE MR. ILBERT said:—

"My hon'ble friend Mr. Hope has explained that the draft which he proposes to circulate for criticism is merely a rough draft prepared by the Public Works Department.

"It has not yet been considered in the Legislative Department, and it will have to be very carefully scrutinised in that Department before it is introduced into this Council. I have read the draft somewhat hastily, and have made some suggestions as to the form and arrangement of the clauses; but the Bill raises a good many difficult questions, some of which I should like to have a further opportunity of considering, and which the Council will be in a better position to consider after the draft has received that external criticism to which Mr. Hope has explained that he proposes to submit it."

His Excellency THE PRESIDENT said:—

"The remarks that have fallen from my hon'ble friends, Mr. Hope and Mr. Ilbert, will show that in giving my assent to the introduction of this Bill I am in no way committed to any provisions which it may contain, and which, as Mr. Hope has explained, are at present only in rough draft, and therefore not in a condition to be submitted to me. I entirely agree that it is desirable to consolidate and amend the law relating to railways in this country in various ways; and I am very glad to find that Mr. Hope proposes to consult public bodies and persons interested in railways, either as shareholders, managers of companies, or on behalf of the public, before the Bill is introduced into this Council. It will, of course, before its introduction, be submitted to my successor, Lord Dufferin, who will by that time have assumed

the office of Viceroy; and for myself I have only to say that I agree that a Bill for consolidating and amending the law regarding railways in India is undoubtedly needed."

The Motion was put and agreed to.

The Council adjourned *sine die.*

SIMLA;
The 30th October, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

G. C. B. Press, Simla.—No. 629 L. D.—31-10-84.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 5th December, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble Mahárájá Lúchmessur Singh, Bahádur, of Darbhanga.
The Hon'ble J. W. Quinton.
The Hon'ble R. Miller.
The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.

PÁNCH MAHÁLS LAWS BILL, 1884.

The Hon'ble MR. ILBERT introduced the Bill to amend the law in force in the Pánch Mahás, and moved that it be sent to the Government of Bombay for opinion.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Bombay Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to repeal part of section 6 of the Indian Tariff Act, 1882. He said:—

"The Government of Madras recently submitted a draft Bill to consolidate and amend the ábkárí law of the Presidency of Madras for sanction to its introduction in the local Legislative Council, and, on examination of its provisions, it was found that two clauses of one of its sections, imposing a duty on liquor, were, as applied to spirit, *ultra vires* of the local legislature, as the mode of fixing the excise-duty on spirit is determined by section 6 of the Indian Tariff Act, 1882. It was also feared that the penultimate clause of the latter section, by keeping in force under the authority of the Governor General's Legislative Council an unexplored mass of law existing on the 10th March, 1882, might render other provisions of that Bill *ultra vires*.

"This in itself would make it necessary that legislation should be resorted to in the Council of the Governor General, in order to prevent the Madras Bill from being declared invalid; and as, moreover, section 6 of the Tariff Act must seriously hamper any local legislature contemplating legislation like that proposed by the Madras Government, it is proposed to repeal that section, leaving it to the Local Governments to deal with the mode of fixing the duties of excise on spirit, under the other enactments locally in force, subject, so far as any discretion is allowed to them by those enactments, to the general executive control of the Government of India.

"The present Bill has accordingly been prepared. It repeals section 6 of the Tariff Act, except the last clause amending section 1 of Act XVI of 1863, which Act is still in force."

The Motion was put and agreed to.

CARRIAGE OF PASSENGERS BY SEA BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend Act II of 1860, relating to the carriage of passengers by sea. He said:—

"Act II of 1860 contains provisions for the relief and maintenance of distressed and shipwrecked emigrant-passengers, and for forwarding them to their destination when left without their consent at places other than that to which they are bound. The Act was passed under the special authority of an Act of Parliament called 'The Passengers' Act, 1855,' and it required that authority, because it operates in parts of the world beyond the limits of British India. The Passengers' Act, 1855, empowered the Indian legislature to

declare that Act or any part of it applicable to the carriage of passenger on any voyage from any ports or places within British India, to be specified in the Act, to any ports or places in any parts of the world whatsoever, to be also specified in the Act. The Council will observe that the terminal ports of the voyage must be specified in the Act, and that no addition can be made to their number without fresh legislation. The Act of 1860 applied the Passengers' Act, 1855, to certain voyages within specified ports, and it naturally named as ports of destination those places to which at that time emigration took place from British India. But since 1860 the number of places to which emigration takes place from British India has largely increased, and the consequence is that there are a number of emigrant-voyages to which the provisions of that Act are not applicable. That is one defect of the Act. Another defect is that the Act speaks of a passenger finding himself, without any neglect or fault of his own, within some colonial or foreign port or place other than that at which he may have contracted to land. But the Indian emigrant does not as a rule contract with the owner or charterer or master of a vessel to be carried to any particular place. In all cases falling under the present emigration law, what happens is that the contract is made by the recruiter with the emigration agent for the colony importing labour. Therefore, strictly speaking, the Indian emigrant cannot be brought under the provisions of the Act. Both these defects were brought to light in a case which recently occurred, and the object of the Bill is to remove them. The Act which it is proposed to amend is a short one, and it will probably be found the most convenient course to repeal the Act and to re-enact it with the necessary modifications."

The Motion was put and agreed to.

TRANSFER OF PROPERTY ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved that the Hon'ble Peári Mohan Mukerji be added to the Select Committee on the Bill to amend the Transfer of Property Act, 1882.

The Motion was put and agreed to.

KHOJÁ SUCCESSION BILL.

The Hon'ble MR. ILBERT also moved that the Hon'ble Rao Saheb Vishvanath Narayan Mandlik be added to the Select Committee on the Bill to amend and define the law of Testamentary and Intestate Succession to Khojás.

The Motion was put and agreed to.

At the conclusion of the business before the Legislative Council His Excellency THE PRESIDENT made the following remarks:—

"Before this Council adjourns to this day fortnight, this being the last meeting of the Council during my tenure of office as Viceroy and Governor General of India, I am anxious to avail myself of the opportunity to express my very sincere thanks to the members of this Legislative Council, both past and present, for the very valuable assistance which they have at all times given to the Government of India in connection with the Bills which have been brought before the Council. I very fully and deeply recognise the value of their services in that respect, and I also beg to tender to them my personal acknowledgments for the aid which I have ever received from them in the consideration and discussion of the questions which have engaged the attention of this Legislative Council.

"I may mention that, in accordance with the usual practice, members of the Legislative Council will be permitted to be present when the new Viceroy takes his seat. Lord Dufferin arrives here on Saturday afternoon, the 13th instant,—the arrangements for his reception will be duly notified in the Gazette,—and the members of this Council who may be present to receive him will follow him into this room, where he will take his seat."

The Council adjourned to Friday, the 19th December, 1884.

FORT WILLIAM; *The 9th December, 1884.*

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

Government of India Central Printing Office.—No. 823 L. D.—9-12-84.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, on Friday, the 19th December, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., P.C., F.R.S., D.C.L., G.M.S.I., G.M.I.E., *presiding.*
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G.
The Hon'ble J. W. Quinton.
The Hon'ble T. M. Gibbon, C.I.E.
The Hon'ble R. Miller.
The Hon'ble Amír Alí.
The Hon'ble W. W. Hunter, LL.D., C.S.I., C.I.E.
The Hon'ble H. J. Reynolds.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St. A. Goodrich.

In opening the Proceedings at the Council, His Excellency the PRESIDENT made the following remarks:—

"YOUR HONOUR AND GENTLEMEN:—I cannot take my seat for the first time at this Council Board without desiring to express to you the extreme satisfaction which I feel in being associated with so many distinguished persons in the government of this great dependency. I feel that for a very long time I must be little more than a learner in regard to the details of many of those important questions which will come up before us from time to time. But it makes me happy to think that I shall have for my colleagues and advisers men so thoroughly acquainted as yourselves with everything that is connected with the administration of India, and in whom both Her Majesty's Government and the

general public possess such confidence. I only hope that I, on my side, will be able to do what is incumbent upon me for expediting the public business to your satisfaction."

CARRIAGE OF PASSENGERS BY SEA BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend the law relating to the carriage of passengers by sea, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Reynolds, Miller and Goodrich and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

TARIFF ACT, 1882, EXCISE ACT, 1881, AND BENGAL EXCISE ACT, 1878, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN introduced the Bill to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend the Excise Act, 1881, and the Bengal Excise Act, 1878, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Ilbert, Rao Saheb Vishvanath Narayan Mandlik, the Hon'ble Mr. Goodrich and the Mover.

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English, and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

STRAITS SETTLEMENTS EMIGRATION ACT, 1877, REPEAL BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Bill to repeal the Straits Settlements Emigration Act, 1877, and to amend the Indian Emigration Act, 1883, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill be passed. He said:—

"When I obtained leave in October last to introduce the Bill that is now before the Council, I explained at some length the historical aspect of the case, and the reasons which led the Government of India to think that the time had come for repealing Act V of 1877, and leaving emigration from Madras to the Straits Settlements perfectly uncontrolled on the Madras side, while relying on the protection to be afforded by the Straits Government to the emigrant after his arrival. I need not go over this ground again; it will be sufficient to repeat that the Act refers solely to Madras; that emigration has been free over the rest of India since 1872, but practically, except from Madras, there has been little or no emigration to the Straits; that the Act itself was a compromise between the free emigration which the Straits authorities desired and the general system of State emigration which obtains with other colonies; that there was a conflict of law between this Act and the Straits legislation, the latter providing for the recovery of advances made to the emigrant before leaving India, while the former declared all contracts for the recovery of such advances to be null and void; and that as a matter of fact the Act had been a failure, for it appeared that of the total number of Natives of India emigrating to the Straits less than a quarter were registered and protected under this Act, while the other three-quarters went over nominally as free passengers, though to a great extent assisted by advances from the labour-contractors.

"I explained that when Act V is repealed the only restriction on emigration on this side of the water will be that emigrants will be registered by the Emigration Officer, and a complete nominal roll prepared by him will be conveyed by the commanders to the Straits authorities, and that the emigrant will make his contract after arrival at the Straits before the Emigration authorities of that Government: I added that the protection provided for in the Ordinance framed by the Straits Government appeared to us and to the Madras Government to afford sufficient protection and was framed to a great extent on the lines of our own protective legislation.

"That Ordinance has now been passed into law by the Straits legislature, and the Government of the settlement are urgent in asking us to lose no time in repealing the Act of 1877.

"I may mention that the Ordinance did not pass into law unopposed in the local legislature. There are certain provisions in the Ordinance which were

considered to interfere unduly with the liberty of the subject, and which were not only opposed in the legislature but have been made the subject of remonstrance to the Government of Madras. The object of these provisions is to prevent the free emigration to the Straits being made a cloak for the purpose of evading our law by means of transhipping emigrants from the Straits to other places, such as the Dutch Settlements, with which we have no convention, and to which emigration from India would be illegal, and where the Indian coolie would be unprotected.

"It was clearly incumbent on the Straits Government to prevent this, and they have loyally carried out the obligation, though at the cost of some difficulty in passing their Ordinance, and the Government of India are bound to express their gratitude for the consideration herein shown to their wishes.

"The Bill now before the Council is, as I said before, exceedingly simple in its provisions. It has been circulated to all the Local Governments and Administrations. The Madras Government have expressed themselves fully satisfied with it, and the other Governments, with one exception, have also approved it, Sir Charles Aitchison from the Punjab expressing an emphatic approval of the principle of freeing emigration from all restrictions before departure, and trusting to protection after arrival. There is, however, one exception. From the Government of Bengal have come certain objections, but the letter explaining those objections (Paper No. 10 to the Bill) is, as will presently be seen, written under a misapprehension. The misapprehension, I ought to explain, is probably due to some correspondence with the Revenue Department, which took place in April last, before the action to be taken was finally settled with the Madras Government, and in which His Honour the Lieutenant-Governor was consulted as to the expediency of extending to Bengal certain regulations which the Straits Government proposed as sufficient, in conjunction with their own Ordinance, for regulating emigration from Madras. None the less the letter is written under a misapprehension. The Government of India do not, as supposed by the Government of Bengal, propose substituting any legislation for Act V of 1877, much less do they propose to apply such legislation to Bengal, and the only executive control which they propose to exercise is to cause the nominal roll, which is already required by the Native Passenger Ships Act, to be prepared by the Emigration Officer and to be delivered by the commander of the vessel to the authorities of the Straits.

"This of course touches only the form of the objection. The substance of the objection is to the fact of our recognising in any way the system of recover-

ing advances which is provided for in the Straits Ordinance.' Now, this system is one which we do not recognise, as the Government of Bengal rightly observe, in our dealings with emigration to other colonies. It is undesirable that in colonies where at the best the Indian emigrant is not only a stranger in a strange land, but very helpless in the hands of the employer-class, that he should start under the burthen of a load of debt; and in these colonies the supply of Indian emigrants has been such an urgent necessity for the welfare of the colony that we have been able to insist on a different system being adopted. That system is that the coolie before leaving India enters into a contract not with a particular employer but with the Colonial Government through their agent here. The Colonial Government pay all his expenses from the moment of his recruitment up to the time of his arrival at the colony from the general revenues, and we look to them to carry out the terms of the agreement as against any subsequent employer. In other words, these advances are made in those cases not by the individual employer but by the Colonial Government. Of course, in the long run these advances have to come out of the coolies' wages in some shape or another. It may take the shape of a lower rate of pay, or, as in Assam, of a longer indenture, than would otherwise be insisted on; but we may be assured that in some shape or another the colony recoups its expenditure from the labour fund ultimately, though by the method adopted the first payment comes out of the pocket either of the tax-payers in general or of a special class. The case of the Straits, however, is different, and it is different in two ways. In the first place, owing to other sources of labour-supply being open to them, the Indian element is not of such urgent importance to the colony as to justify their maintaining a system of State immigration out of the general revenues, and they have always steadily refused to do so; on the other hand, a system of free emigration has been going on between the Madras Coast and the Straits ever since the beginning of the century, and the settlers from Madras form a strong and important element in the community, quite capable of looking after themselves and protecting their countrymen. In other words, we have neither the only lever wherewith we could move the Straits Government to adopt the colonial system, nor is there the same necessity for it there as elsewhere. As I have already observed, Act V of 1877 was intended to stop the system of emigration under advances by rendering the recovery of such advances illegal. The result has been that four-fifths of the emigration to the Straits have evaded the restrictions of the law, and have gone on unregistered and unprotected as well as unhampered by that Act. It is in consequence of the entire failure of the Act in this respect that we have now before us, with the full acceptance of the Madras Government, the proposal to repeal

the Act and to rely on protection in the colony rather than on restriction at the place of departure.

"So much for Madras; now what is the position of Bengal in regard to this question? Since 1872 there has been no legal restriction whatever on emigration from Bengal to the Straits. Act XIV of 1872 empowered the Government to exempt by notification the Straits Settlements from all its provisions, and in June of that year a notification to this effect was accordingly issued. If any emigration has taken place between Bengal and the Straits during the past fourteen years, it has been perfectly free, and there has been no interference with the power of the Straits Courts to order the recovery of advances. There has been a legal power to rescind that notification, but no one has ever asked that it should be rescinded; and why? The real reason is to be found in the simple fact that there has practically been no emigration from Bengal to the Straits. Of course, such a system may hereafter grow up, but at present, so far as I can learn, there are no signs of it. Under the Act which was passed last year, but which has not yet come into force, for regulating emigration to the colonies, the Straits Settlements are expressly excluded in the definition; in other words, no restriction is placed on emigration to those Settlements, but the Act gives power to the Government to extend the provisions of Act V of 1877 to other parts of India. At that time it was uncertain whether the Madras Act would be amended or repealed, but, as was explained at the time, there was no intention whatever of extending the Act as it stood to other parts of India. In any case fresh legislation would have had to be resorted to if it were desired to control emigration from Bengal to the Straits. The repeal, then, of Act V of 1877 leaves the position *quoad* Bengal exactly where it was, and the objections of His Honour are really of a theoretical rather than of a practical nature. The question he asks is, in effect, 'If there were emigration from Bengal, would it be right to regulate it on the same lines as those on which emigration from Madras is regulated?' I think for our present purpose it is scarcely necessary that I should try and find an answer to this question. I may, however, venture to assure the Lieutenant-Governor on the part of the Government of India that we recognise a distinction between the circumstances which surround a Madras coolie at the Straits and those which would surround a Bengali coolie, and if emigration between Bengal and the Straits should receive an important development it will be open to him to propose a stricter method of regulating it, and that any measure which he proposes will receive the fullest consideration.

"Before leaving off I may explain exactly what the recognition of the system of advances amounts to. The immigrant comes under contract after

arrival at the Straits before the Indian Immigration Agent. He is specially warned (section 27 of the Ordinance) that no contract unless so made is valid. Section 43 provides that this officer shall, before entering in the contract-deed the amount advanced, satisfy himself that it has really been paid in full to or on account of the emigrant. Then section 42 limits the entire amount which can be recovered to 12 dollars, and the instalments in which it can be recovered to one dollar a month. The minimum wages are 3·60 dollars a month, so that the deduction cannot be more than about 25 per cent. on a man's average earnings for a year. This completes all I need say on the subject; and apologising for the length at which I have occupied your attention,—a course which my respect for the objections offered by so high an authority as the Lieutenant-Governor of Bengal seemed to render incumbent on me,—I have only to express my hope that the Bill may be passed, and that the system of free emigration, which has already been extended to Burma, may prove successful in the Straits."

His Honour THE LIEUTENANT-GOVERNOR said:—"My Lord, before your Excellency puts to the Council the question that this Bill be passed, I would ask to be allowed to make a few observations with reference to the remarks which have fallen from my hon'ble friend in charge of the Bill; and more especially from the fact that I find that I am referred to as the one solitary exception among many great authorities who have taken no objection to the proposals of the Government of India. I may say at once that I do not now intend to raise any question as to whether this Bill should or should not be passed, or to delay in any manner the carrying of the Motion which is to be put to the Council. The Act which it is proposed to repeal is an Act of this legislature passed in the year 1877, and, as Sir Steuart Bayley has said, applies exclusively to the Presidency of Madras. As that Act has now become obsolete from circumstances which have made its retention on the Statute-book clearly not necessary, it does not concern the Bengal Government whether it remains on the Statute-book or whether it be repealed. The fact is that emigration from the Madras Presidency to the Straits Settlements has been going on, I believe, from the commencement of the present century. A large Madras population is, therefore, collected in the Straits Settlements for the purpose of labour, and all attempts which have been made by the Government of India to restrict that emigration to the same system under which emigration generally is carried on to the colonies have been found abortive. I find from the papers that since 1877, while only 4,500 emigrants have passed out from Madras to the Straits Settlements under the operation of the Act, not less than 25,000 have gone outside of it. The reasons for this, amongst others, are, I believe, that there

are two French ports within the limits of the Madras Presidency, and whatever attempts the Government might make to control and supervise emigration from Madras are frustrated, where objections are taken to those restrictions, by coolies being taken from our own districts to ports of embarkation in French territories; and then they are absolutely beyond the control of either the Government of Madras or the Government of India. The necessity, therefore, for a repeal of the law became obvious from the fact that free and unrestricted emigration was going on from Madras to the Straits Settlements, and as far as the mere repeal of the Act I have nothing to say. But it is in the circumstances which are connected with the repeal of the law and which have reference rather to the executive arrangements which the Government of India have made with the Straits Settlements that the matter deserves attention. When the question was referred to me as Lieutenant-Governor of Bengal, whether I had any objection on my part to the extension of similar arrangements as had been concluded between Madras and the Straits to this part of India, I thought it my duty to take exception to the Ordinance of the Straits Settlements which relates to the regulation of emigration to that colony. Under the operation of the general Emigration Act which was recently passed, it is known to the Council that the greatest strictness is enforced as regards all circumstances connected with the recruitment, registration and deportation of labourers going from any part of India to the colonies. We insist upon the certificate of the recruiter being produced in the recruitment district, and the registration of those who intend to emigrate before the local authorities of that district. We regulate their being brought down to Calcutta to emigration-depôts in this city; we insist as a primary condition that there shall be no kind of advances made to the coolie, that he fully understands his contract before he leaves the country, and that he leaves it unshackled by any debts. These general conditions under which emigration is directed are the outcome of a great many years of consideration, discussion and experience. Nothing has been so strongly insisted upon in my recollection of the subject when I was connected with the Government of India than that no system of advances should be tolerated. When, therefore, it was put before me that emigration from Bengal to the Straits might be allowed on the open system under which advances were permissible, I thought I was bound to take the exception which my former experience of the subject justified me in taking. The obvious reasons as regards these objections are, that, in the first place, we have now some thirteen colonies competing in the labour-markets in Bengal for coolies to emigrate to their respective colonies, and they all work under a system which does not recognise the two provisions to which I

have referred. Now, if the recruiter from the Straits Settlements is to arrive in Bengal authorised to recruit, and free from all those conditions as to registration and other restrictions which the general law imposes, and is to go into the interior of the country with money to induce labourers to accompany him, not only would he probably succeed from the fact that the people of Bengal are very credulous, and are ready to take money from everybody who offers it to them, completely indifferent as to the circumstances or conditions under which they take it, but he would be enabled to take away labourers, ignorant of the terms of their contracts and bound by a load of debt which may be increased by claims for clothing, food and other things after their arrival at their destination. The Bengali emigrant would thus be in a very unsatisfactory position. Then, again, if the Straits Settlements recruiter is empowered to advance money, he is very favourably circumstanced as compared with recruiters for other colonies; and it would come to pass, I have no doubt, in a very short time, that, if we allow this system to arise in Bengal with regard to the Straits Settlements, we shall find the Emigration Agents in Calcutta, for Mauritius, the West Indies and different places claiming to be placed in the same condition as the favourably constituted Straits Settlements recruiter; and I don't know how we should be able to resist their claim. Therefore, I am sure the practice would grow; and, as the system has been condemned as a bad and a mischievous one, I felt, when I was asked whether the proposal was applicable to Bengal, that I was bound to oppose it as one which it was not desirable to encourage in this Presidency. There are other objections, to one of which my hon'ble friend has already alluded, namely, that a coolie going from Bengal is going among a strange population; and if the Straits Settlements authorities understand that under the arrangements recently made with them, they are at liberty also to come to Bengal and carry out a procedure which may be quite right and reasonable with regard to the Madras Presidency, from the fact that emigration from Madras has been going on for half a century or more, we are absolutely without any kind of protection, and may ultimately see a system grow up which is altogether objectionable. Therefore, I am very glad to receive the assurance, which my hon'ble friend now gives me, that, if such a state of things should arise, I should have a right to appeal to the Government of India to afford me that legislative protection as regards emigration from Bengal to the Straits Settlements which is necessary to make it consistent with the general principles which govern emigration to the Colonies."

The Hon'ble MR. ILBERT said:—"I understand the law and facts of the matter to be shortly these. At present there is no law regulating emigration

from Bengal to the Straits Settlements, and no emigration to which such a law, if it existed, would apply. There is a law regulating emigration from Madras to the Straits, and there is on our Statute-book a provision enabling the Government by executive order to apply that Act to other parts of India, including Bengal. As I was in charge of the measure which contained the provision giving that power, perhaps I might be allowed to remind the Council of the reasons I then gave for its insertion. I then said:—

'The Indian emigration to that colony takes place, I believe, exclusively from the Madras Presidency, and is at present regulated by a special Act (V of 1877) which applies only to that Presidency. We are now engaged in negotiations with the Government of the Straits Settlements, which will, I hope, before long enable us to repeal this Act and to make emigration to that colony entirely free. But in the meantime, and as a temporary measure, we have thought it expedient to take power to extend the Act to other parts of British India, in case it should be found necessary to regulate emigration from Calcutta to the Straits. I do not in the least anticipate that the Act will be found necessary, because I believe that no such emigration takes place, or is likely to take place.'

"We are now in a position, with the full approval of the Straits Settlements Government and the Government of Madras, to repeal the Madras Act, and as to Bengal I feel sure the Council will be of opinion that our proper course is to wait until the necessity for legislation has been shown to exist, and then to adopt such measures for regulating emigration and protecting emigrants as the actual facts may show to be necessary."

The Motion was put and agreed to.

BURMA STEAM-BOILERS AND PRIME-MOVERS ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend the Burma Steam-boilers and Prime-movers Act, 1882.

The Council adjourned to Friday, the 2nd January, 1885.

FORT WILLIAM;
The 26th December, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

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